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Special Issue: Law and Media

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Examining Media: Theory v. Fact

In September 1969, the Law Center's Professor Jerome Barron appeared on National Educational Television to debate the questions of legal rights and access to the media.

Professor Barron debated these questions with **Richard W. Jencks,** *a lawyer and President of CBS Broadcast Group, the television and radio divisions of CBS; and* **James Reston,** *columnist and Vice President of "The New York Times." Professor Barron is the author of several essays advocating that access to the press be made a legal right. Moderator was Clifton Daniel of "The New York Times."*

CLIFTON DANIEL: Professor Barron, you are, I would say, the chief theoretician of the right of access to the press. What is your theory?

JEROME A. BARRON: Well, my theory is that the First Amendment, interpreted in terms of twentieth-century circumstances, in just its eighteenth-century meaning, gives an unintended bonus, a bonus I think unintended by the framers, to the communications business. In this sense -- if we interpret the words "freedom of the press", which is the language used in the First Amendment, to mean freedom of the publisher, freedom of the broadcast network, freedom of the licensee, there are an awful lot of people whose interests are not being considered. It seems to me that our traditional Constitutional law is focused almost entirely on protecting people from popular sanction or legal sanction after they have spoken. It doesn't give much attention to their opportunities to speak. And I think that the First Amendment ought to be interpreted in terms of what, after all, must be its primary purpose, which is an informing one.

I think that opportunity for expression ought to be a positive dimension of the First Amendment. In other words, I think that the First Amendment should be read not only as just giving unlimited freedom to do what they please to the few people who now manage our news. I don't mean that in an invidious sense. But the networks and the chains control sixty percent of our newspapers in this country. I think that the First Amendment must be interpreted to protect and to reach a broader class of people in the public at large. I

(See INTERVIEW, p. 10)

by Paul Leibe

Television and Society

The Idiot Box— Cultural Octopus?

by Michael Daly

One of the most effective organizing instruments SDS employed in its initial drive against the Vietnam war was a Selective Service document entitled "Channelling," in which the Director described the draft to his local boards as constituting the systematic transformation of inexperienced young men into productive workers for the industrial society. The current national approach toward the commercial uses of television serves a similar channelling role; deployment of what is statutorily public property controls the economy's marginal propensity to consume, keeping it at levels most favorable to the interests which manipulate and benefit from the market.

In recent years, intervention by public groups into the administrative process has been received with acclaim by liberals, academics and legal activists; but such efforts have not addressed themselves squarely to what I feel is the fundamental issue: the legitimacy of commercial television. More than "community service broadcasting," social responsibility, or minority group representation, the key issue is how much longer we will allow programming to be controlled by the profit *motive* at the necessary *expense* of the general society.

For since current programming schemes are intentionally aimed at salesmanship, which the consumer is forced to underwrite with or without his knowledge and/or consent, commercial television is a principal device in the maintenance of capital concentration in managerial hands. I cannot see how this is in the public interest.

The arrival of television in the American society has unquestionably had a profound impact on both our personal and societal behavior, and it has a direct causative relationship to the strange phenomenon of an increasingly productive force with a contracting real wage scale. Television developed from the desire of commercial interests to equip themselves with a more refined auctioneer of consumer goods than its progenitor, radio. Advertisers were actually dictating program content for television as late as 1963, and today share with the broadcasting industry the decision as to what kind of programming will return the greatest profits for their respective shareholders.

Dean Roscoe Barrow, writing in the Virginia Law Review, points out that since it is economically essential to distribute cost over the broadest possible base, television is pitched to the lowest common denominator of viewer appeal. Experimentation is discouraged, and Gresham's law operates to drive out quality programming that would appeal to substantial minority audiences, in favor of consistently stereotyped boredom which sets the viewer up for the hyped commercial.

Thus, it is against the interests of those in control of broadcasting today to further the cultural advancement of society, or even to tell the truth, because to do so would tend to mute the psychosexual removal of the viewer's resources through the advertising medium. Programming is geared toward supplementing the true role of television, selling; since consumers finance

(See BROADCASTING, p. 9)

In This Issue:

Green Report Stirs Conflicting Opinions

Easily the hottest topic of discussion around the Law Center recently has been the Green Committee Report on Student Participation, made public last week.

Professor Pock, who submitted a proposal of his own, said that he favored full student participation in such decisions as promotion and tenure, but an advisory role for students regarding admission and graduation requirements. "The line of demarcation between these two ought to be carefully drawn in a reasoned constitutional document. The majority report does not appear to accomplish these ends."

Professor Kayton was also not completely satisfied with the report. "The majority report allows a better structure for student/faculty communication, but it fails to set up an adequate procedure for the implementation of student ideas."

Professor David Green felt that the report was "better than nothing at all," though he noted that it was somewhat "timid and tepid." He questioned the report's basic assumptions of faculty expertise and long range commitment to the Law Center, and proposed that a governing body for the school be composed of equal numbers of students and faculty.

SBA President Jon Stover saw the report as a "token gesture," but something that "should at least be tried." He criticized the committee for extending student power to "only non-sensitive issues," and said that students should be represented on all faculty committees.

Chuck Dunn, Contributing Editor of The ADVOCATE, felt that the report is "a good first step," but "left much to be desired" in such areas as tenure, faculty selection and grade review. "However, it may not matter since the great majority of students don't give a damn about the law school."

A random selection of first year students provided some more basic reactions to the report. Charles Snowden termed the idea of student representation "a good idea, as long as the new representatives actively promote student interests."

Others were more critical. Ted Freedman saw the report as "a meaningless gesture on the part of the administration," while Stephen Gold felt that it was "not important enough for anyone to get excited about."

The vast majority of students, however, were not familiar with the Green Committee or its report.

Left to Right: Ivan White, Aaron Handleman, Fred Franklin, John Simkanich, Gregg Ball. Not pictured: Peter Harwood Meyers, Cynthia Edgar, Jan Miller.

by Tom Blair

SOUP Still Simmering About Campbell's Faulty Advertising

The FTC has notified SOUP that it could submit additional comments concerning the adequacy of a consent order which the FTC had provisionally accepted with Campbell Soup Co. and its ad agency. By an earlier order, the FTC had postponed indefinitely the entry of the consent order pending an oral argument on the crucial question of standing of consumer groups before the FTC.

This decision represents an acknowledgement, albeit, a small acknowledgement, that consumer groups have a place in FTC proceedings.

The consumer group SOUP had previously given oral argument to the Commission arguing that it had a right to intervene and that it had a right to a further hearing on the adequacy of the consent order. The Commission instead held, in the words of Commissioner Jones's concurring opinion, that the group had been given everything it asked for except formal intervention—de facto and not de jure recognition.

This decision appears to be a compromise between the various factions in the Commission. Commissioners Elman and MacIntyre, in the previous order, stated their opinion that SOUP, Inc, had a clear right to intervene.

Also, in today's decision, the Commission granted SOUP's Motion for Disclosure of certain documents and materials in its evidentiary files.

One effect of this decision will be to open the doors to other consumer groups even though the Commission did not rule that such consumer representatives have a right to intervene. Since the FTC did not rule that they did not have a right to intervene and since they have allowed SOUP to submit further briefs on this matter, the decision indicates that the Commission is at present receptive to consumers and consumer groups who wish to participate in FTC proceedings.

The consent decree was proposed by the FTC as a means of settling a case in which it appeared that Campbell Soup Co. enhanced pictures of its soups by putting clear glass marbles under the vegetables. SOUP, Inc. opposed the entry of the decree on the grounds that it provides no deterrence for other advertisers, and no warning for consumers.

SOUP, Inc., a non-profit organization made up at present of seven law students at George Washington University, has asked that as an alternative to the present consent order the FTC adopt a meaningful sanction in the area of deceptive advertising; e.g., that the Commission require Campbell Soup Co. to carry in their advertising a statement that they engaged in a deceptive advertising practice and state exactly what the violation was.

SOUP presently is preparing its brief on the inadequacy of the consent order for submission to the Commission on March 20.

Burns & Fox Victorious in Van Vleck Club

On Friday evening, February 13, 1970 Sharon-Lee Berns and Brenda L. Fox, both second year students of the George Washington National Law Center, won the Final Round Competition of the 1969-1970 Van Vleck Appellate Case Club Upperclass Moot Court Competition.

Runners-up were James W. Ziglar and Gordon E. Wood, both second year night students. Judges were the Hon. Tom C. Clark, former Associate Justice of the United States, the Hon. Erwin Griswold, Solicitor General of the United States, and John Terry, Chief of the Appellate Division, United States Attorney's Office, Washington, D.C.

All contestants received academic credit for participation, and members of the National Moot Court team are selected by the Faculty Adviser, Professor David Seidelson, from among the eight semi-finalists.

In addition, all four finalists received engraved plaques, and the two winners received, on behalf of the Law Center administration, the newly-created National Law Center-Van Vleck cash prize of two hundred dollars.

Earlier this year, Phillip J. Kardis and Bradford E. Kile won the 1969-1970 Patent Van Vleck Competition. Runners-up were George A. Loud and Victor J. Toth.

Faculty Feature

Preventive Detention: Nothing New

by Dave Schlee

Professor David Robinson's specialty is criminal law, and although his generally conservative views on the subject may not be shared by a majority of the student body at the Law Center, he advances a number of sophisticated arguments in behalf of those views which are not easily dismissed.

Typical is his strong stand in favor of "preventive detention," a proposal now before Congress which would allow a judge broad discretion in detaining without bail an individual accused of committing a crime.

At first glance this would appear to run contrary to the constitutional safeguards of the Eighth Amendment, but Professor Robinson disagrees. "Preventive detention is nothing new, we've always had it." In fact, he says, at the time of the signing of the Constitution it was "automatic" for most serious crimes.

The same was true in England at the time, and Prof. Robinson notes the English practice of the late 18th Century of using excessive bail to harrass political opponents in limiting the Eighth Amendment to First Amendment freedoms. With such a limitation, he sees nothing unconstitutional about preventive detention, when applied to those who are charged with "dangerous and violent" crimes.

However, the use of preventive detention should be limited to those cases where there is "a predictably high degree of risk." Professor Robinson cites drug addicts and those who commit certain types of robbery as examples of "the high level of recidivism" which would bring preventive detention into play.

The proposal now before Congress provides for a detention hearing to establish "a substantial probability of guilt" and to determine whether preventive detention is warranted by the nature of the crime and the defendant's past record. Several criteria are provided which attempt to define the crimes of high risk to society: those crimes involving narcotics addicts, dangerous crimes, crimes of violence, and crimes obstructing justice. In practice, Professor Robinson feels that misdemeanors and some felonies, such as possession, would fall out side the reach of preventive detention.

Professor Robinson sees preventive detention as an important tool in protecting the public from dangerous criminals, and while he feels that its adoption would be no panacea, he asserts that "it's better than what we've got now."

More generally, Prof. Robinson says that our major problem in dealing with crime is that "we don't know very much what causes it." It's not a question of race or poverty -- it cuts across these lines. Thus, for the time being we must look not to the causes of crime so much as to the results, and try to protect the public from them.

by Tom Blair

Furthermore, while he sees rehabilitation of the criminal as a desirable goal for society, "it is unattainable in a large percentage of cases." Therefore, he feels that it would be realistic to "devote major attention to providing facilities compatible with human decency."

Professor Robinson notes however, that continuing research in the area of rehabilitation is necessary and that more pilot programs such as the Methadone Maintenance Program (for drug addicts) would be worthwhile. Thus for the time being our major effort in combatting crime should be to make the system of criminal punishment more efficient by providing "lots more judges, lots more prosecutors and some more jails."

[Editor's Note: Professor David Robinson has been involved in the criminal law for a good portion of his professional career. A product of Columbia and Harvard Law Schools, he spent six years as a state and federal prosecutor (as well as civil work) in Oregon before coming to GW in 1964. More recently he has testified before the House Judiciary Committee on the D.C. Crime Bill.]

Ties With Broadcasting Attacked

Citizens Group Fights FCC Inequity

by Albert H. Kramer

Mr. Kramer is Executive Director of the Citizens Communication Center in Washington.

The Federal Communications Commission, once a gadfly nipping the neck of the American broadcasting industry, is fast becoming a maggot wallowing in the wasteland it allegedly regulates. With a seemingly concerted effort, the Commission's various bureaus are apparently eager to serve broadcasters more than the public. And broadcasters, guaging their reponsibility to the public by the example set by their regulatory agency, recognize the FCC's mutterings as hollow rhetoric. When both broadcasters and the FCC thumb their noses at the public, citizens have generally responded by meekily resigning themselves to mediocrity.

But in the past few years, citizens and community groups throughout the country have aroused unusual support. Citizens' unexpected success in public interest pleadings at the Comission and court levels have nourished the growth of organizations trying to affect broadcasting.

The Citizens Communications Center was established in August, 1969, to accommodate in several ways this expanding public vigilance over broadcasting. The Center provides research and legal services to people who want to improve broadcasting through legal processes. It also acts as a liaison between citizen's groups and the FCC, broadcasters and other citizens' groups.

The Citizens Communications Center, for example, acts as counsel for Black Efforts for Soul in Television (BEST), the group that spearheaded the challenge for the license renewal of WMAL-TV; the Center is also assisting as counsel for Business Executives Move for Vietnam Peace, an organization filing a fairness complaint against WTOP for refusing to sell them time to run an announcement opposing America's Vietnam policy.

But the Center is not another communications law firm which renders its clients free legal services. It has also initiated actions at the Commission and court levels as a representative of no less a client than the general public interest.

One such battle began when the Center heard that FCC Commissioner Bartley was meeting with the Federal Communications Bar Association, supposedly to discuss the extent to which broadcasters must survey their communities to ascertain the needs and interests of their service area. Because of differing rulings by various bureaus of the FCC, the standards applicable to ascertainment of community needs had become confused.

Bartley claimed he was simply going to answer a few questions from the industry on what the Commission expected of broadcasters. But word had already leaked out that Bartley would solicit comments from industry representatives on a proposed primer on ascertainment. The Center was aware of the importance of the meeting, and we tried to attend. We felt it would be inappropriate for a commissioner to sit down with industry representatives without hearing the views of the public's representatives as well. As it turned out, the Commissioner wasn't interested in the opinions of the public at that time; he wouldn't let us in.

The Citizens Communications Center, undaunted by the attempts to exclude citizen participation, filed a formal petition of protest, urging that the proposed primer be made available for public comment. The petition was granted, and the Commission indicated it would not adopt the primer until it had reviewed the comments.

The Center responded by submitting elaborate comments on behalf of different citizens' groups, and advised other groups of the opportunity to comment. Largely as a result of the Center's efforts, public response to the Commission's request for comments has been so great that the deadline for filing comments was extended by 70 days.

One of the Center's biggest fights has ranged from a Congressional committee to the Commission to the courts. When Sen. Pastore, introduced S.2004, the Center acted as counsel for BEST in its efforts to block passage. The proposed legislation would require that an incumbent broadcaster would have to be disqualified from a license renewal before a completing application could be filed, and disqualification is a virtual impossibility with the political high jinx of the FCC and broadcasters. An analagous rule in election procedures would require an incumbent to be impeached before anyone else could run for office.

The Center aided several citizens' groups opposing the bill in various ways. On their behalf, we prepared and distributed informational memoranda; we called on congressmen, senators, and community leaders who sought information about the bill. Then the Center aided groups in drafting testimony for Pastore's hearings on the bill.

Although passage of S.2004 seemed imminent, broadcasters began to get nervous about the growing opposition. In December 1969, they turned to the FCC for relief, revealing once again the audacious relationship between broadcasters and their supposed regulators. And, of course, the Commission responded with exactly the actions hoped for by the industry; a Policy Statement on Comparative Hearings embodying the guts of the Pastore Bill.

The Commission had virtually usurped the power of Congress by enacting a policy still pending as proposed legislation. Thus, whereas citizens had been able to voice their views in Pastore's hearings, they were given no opportunity to be heard at the Commission.

Acting on its own behalf, as well as on behalf of others, the Center attacked the new front without hesitation. We filed an action in the District Court to prevent the Commission from promulgating the Policy Statement. Our motion for Temporary Restraining Order was denied the same day. Then we formally petitioned the Commission to adopt a rule requiring all comparative criteria to be considered in comparative hearings. However, the Commission released the Policy Statement and released an order dismissing the Center's Petition for Rulemaking.

A week later the District Court dismissed, for lack of jurisdiction, the Motion for a Preliminary Injunction seeking to stay application of the Policy Statement until its legality was decided. An appeal from that motion is now pending. Petitions for reconsideration were then filed, and the Commission's various dismissals were then filed, and the Commission is now receiving comments on the petitions.

One of the important issues raised by the Policy Statement is also at stake in many of the Center's cases: can the FCC be allowed to sanction the increasing concentration of control of the mass media in this country? There is already a paucity of votes with access to the media.

The First Amendment and our political system demand a multiplicity of voices and views. The Commission, as the guardian of the airwaves, must affirmatively foster such diversity. Instead, it has chosen to stifle it. Such action must not go unchallenged.

Equally important is the question of whether administrative agencies are going to be held to discernible, definable standards in reaching decisions. At present, the FCC functions by whim and caprice. Our suit marks the first time that a citizens' group, rather than an industry group, is attempting to involve the fundamental fairness demanded by the Administrative Procedure Act in regulatory matters.

And, it marks the first time that a citizens' group is attempting to challenge an agency action of general applicability on the basis of the public's right to be heard before the agency acts.

Law Review Scholarships Debated by Student Bar

by Bill Curle
SBA Representative

At the most recent Student Bar Association meeting President Jon Stover charged that members of the George Washington University Law Review editorial staff could receive full tuition scholarships plus fellowships paying up to $100 per month, regardless of financial need.

The allegations at the March 4, 1970, meeting came during a heated debate over the grade referendum proposed for the first year class which had broadened into a general discussion of law school reform.

Third-year representative Bob Zweben suggested that a general inquiry into the Law Review's funding was needed. Rep. Zweben made a number of charges. He stated that the Law Review's operating costs totaled approximately $30,000 per year; according to Dean Robert V. Kramer the Law Review was allotted $12,000 per year from the student fee payments ($10 per student per semester).

Zweben said that the Law Review takes in about $8000 in subscription fees which leaves approximately $10,000 income from undisclosed sources. He warned that his figures were not exact, but were fairly close approximations.

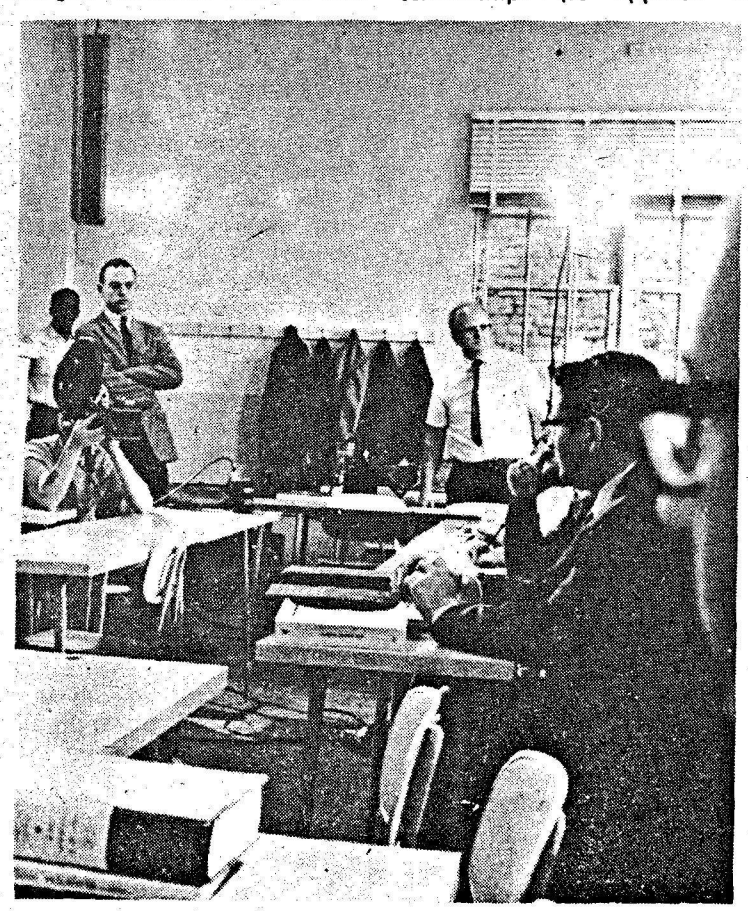
Zweben also charged that Law Review members, aside from the compensation they receive after law school for being members, receive many more benefits than the average law student. He felt that Law Review members held a disproportionate number of scholarships (as opposed to loans) than non-Law Review members, which raises the question of whether scholarships are given for academic performance or financial need. He also questioned why Law Review members were given the student jobs during registration each semester instead of more needy students.

Following the discussion a two-part by-law was proposed. Night school Vice President Robert Cogan proposed that all organizations receiving funds from SBA be required to keep financial ledgers showing debits, credits, and balances as a pre-requisite to funding the following year. Zweben amended the proposed by-law with a second part requiring that all organizations receiving any allocations from the student fee monies make public their financial records showing all income and expenditures. Following Stover's comment that the students obviously have the right to know where their money is spent, the by-law passed unanimously. The by-law will take effect next semester.

At this juncture a motion was passed unanimously to devote the next meeting entirely to the fiscal make-up of the law school, and focusing on the Law Review. Members of the Law Review editorial staff and Deans Kramer and Wallace Kirkpatrick were to be invited to answer questions at the next meeting at 8 pm Wednesday, April 1, 1970. Students are encouraged to attend.

(At press time Editor-in-Chief Samuel Weissbard and two other members of the board had accepted invitations. Invitations to the Deans had not been sent, pending an exact listing of the subjects to be considered.)

(In a related conversation Professor David C. Greer commented that the faculty was not even informed of the law school budget, Dean Kramer being the only one who knows the entire budget.)



The movies come to the Law School for the filming of GASP. The news media are paying increasing attention to non-violent student movements in an attempt to overcome critics' charges of "sensationalism" in the news. by Tom Blair

The Amerikan Boob Tubes Commercialize a Lifestyle

by J. Krugman

As electrically contracted, the globe is no more than a village. Electric speed in bringing all social and political functions together in a sudden implosion has heightened human awareness of responsibility to an intense degree. It is this implosive factor that alters the position of the Negro, the teenager, and some other groups. They can no longer be contained, in the political sense of limited association. They are now involved in our lives, as we are in theirs, thanks to the electric media. (McLuhan, "Understanding Media")

Our actions in Chicago established a brilliant figure-ground relationship. The rhetoric of the Convention was alloted the fifty minutes of the hour, we were given the ten or less usually reserved for the commercials. We were an advertisement for revolution. We were a high degree of involvement played out against the dull field of establishment rhetoric. Watching the Convention play out its boring drama, one could not help but be conscious of the revolution being played out in the streets. (Free, "Revolution for the Hell of It")

YIPPEE! is the first of the great media myths. We chucked the Marx for the McLuhan and radical Amerika its first media trip.

McLuhan saw the media as an extension of the central nervous system, a vicarious stereoscope which allowed the intense personalization of the news. The television was the cool medium, indefinite, imprecise, involving. By presenting this image of events in the cool medium, by adding to the chaos, YIPPIE! was able to pull the middle class out of the tuberoom and out onto the streets.

YIPPEE! wanted to be news, television's half hour reports needed pictures and action. We go to the Stock Exchange and throw money on the floor (quick camera cut to a group of scrambling stock brokers on the floor of the exchange grabbing and fighting for a few dollars). The absurdity of their lifestyle becomes apparent. In five minutes of air time, the Exchange's money worship is exposed better than a hundred pages of speeches and articles in "Ramparts."

A cool medium is of low definition and is involving because the information given is sparse and the viewer must fill in the skeleton with his own ideas. He can not sit back and be entertained. He must use his imagination and when he does, he becomes involved. No one is quite sure of what happened. It is up to the viewer to imagine, to project his own experiences and reactions into the outline given by media.

The wild clothes, mystical reputation of drugs or free love parties attracts more attention than a picture of Dan Rather standing in front of the White House with a report on the President's cold. We rented a bus, loaded it with newsmen and t.v. cameras and freaks and went to Great Neck (camera cut/psychedelic couple running in suburbia taking "tourist" pictures of men mowing lawns and watering gardens).

It speaks to the young kids caught in suburbia. They watch the war and the killings. They experience the death in the living room, see their brothers die. Then comes the picture of the police arresting a kid with long hair just like thay have for smoking a joint just like they wish they could. They just don't hear about it, they experience it. The medium is the message.

It doesn't take long for them to figure out who is on their side; they are open for the advertisement and the media obliges. They look at the tired look on their parents' faces and then see the smiles, feel the community of a demonstration and they're on their way to the next be-in or demonstration in Central Park.

In social studies, they are told that Amerikans have the right to counsel and to a defense at trial. That night they see an indefinite scraggle of angry black lines representing a bound and gagged Bobby Seale in Chicago screaming to the deaf ear of the court that he wants to defend himself. As they stare at the drawing, they fill in the chains and the tight gag as they hear John Lawrence explain that the court felt he had to be bound for his own good.

YIPPEE! is the theatre of the absurd turned into a lifestyle. We sent Mayor Daley a post card warning him that we were going to dump LSD into the Chicago reservoir. There was a news story on each of the major networks showing the mayor stationing guards around the water and then a shot of Hoffman (Abbie) laughing as he explained that Chicago was going to get stoned.

Somewhere in Hicksville, there is a teenager who has been watching the Convention, bored by the long meaningless speeches. The commentators have assured him that the nomination will go to Humphrey (camera cut/Michigan Avenue is filled with kids who are being beaten for apparently no reason by helmeted police with bayonetted National Guardsmen. Eric Severeid compares it to Nazi Germany.)

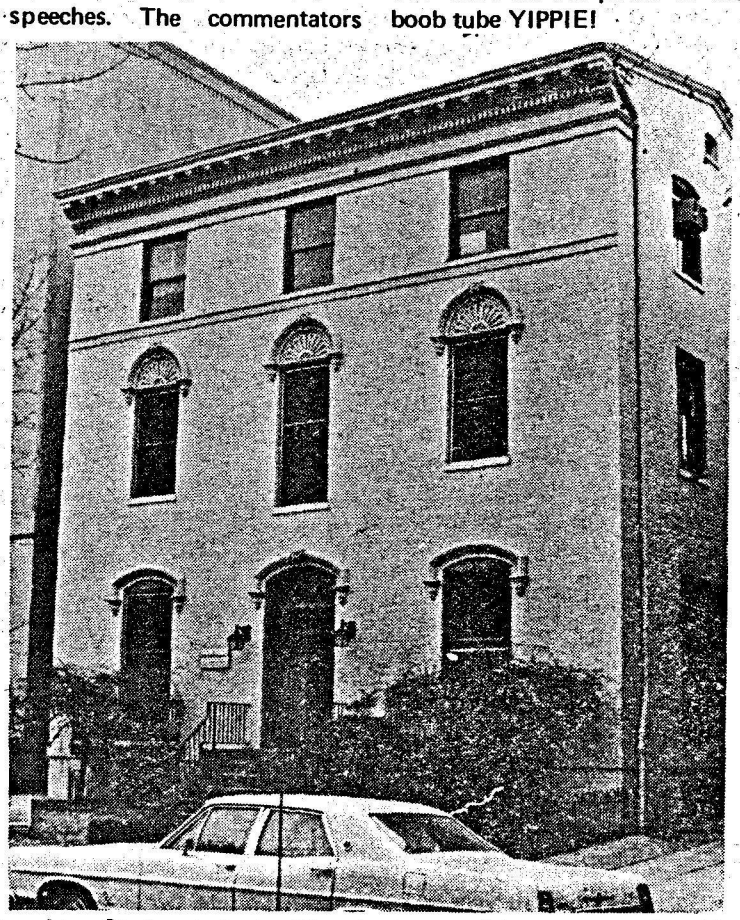
The speeches are getting tiresome. What's going on in the streets? Ribicoff speaks condemning Daley and the slaughter. Daley can't be heard but you don't have to be much of a lip reader to read the anger and curses. It's a cool medium, what he said isn't important, what you thought he said is.

No one knows how many YIPPIES! there are. It doesn't matter. Anyone who acts absurdly in front of the camera or in the streets is a YIPPIE! Mayor Daley was perhaps the biggest YIPPIE! of them all but is heavily challenged by Spiro Agnew and Julius Hoffman. We are a myth, and anyone can be a part of it. Once the world has gone insane, it is a form of insanity not to go insane.

By engaging in a life of guerrilla theatre we increase the chaos. Reality becomes impossible to distinguish from the myth. We don't buy ads on the tube, we make news and get them for free. After all, what's the free society supposed to do? The important thing is not to explain it, but do do it.

As Tom Wolfe pointed out in "The Pump House Gang," Amerika is undergoing a system of age segregation. There is youth and there is the establishment. By projecting our advertisements into the central nervous systems of today's youth and involving them through the means of a media myth projected over a cool medium, by using the establishment press to perpetuate the myth, we create the problem.

Amerika can kill gooks and blacks without a stain on its conscience, but it can't kill its own children. All power to the boob tube YIPPIE!



Law Center student offices have moved to more comfortable accommodations at 714 21st Street, next to Lisner Auditorium. The Advocate office is on the third floor. by Tom Blair

Martin — Trigona Petitions

Illinois Bar Fought

On December 1, 1969, a Petition for Certiorari was filed with the Clerk of the U.S. Supreme Court by Anthony Martin-Trigona, an unsuccessful applicant for admission to the Illinois Bar, challenging certain policies and procedures of the State Board of Law Examiners of the State of Illinois.

In his brief Mr. Martin-Trigona points out that he wishes to be admitted to practice before the Supreme Court of Illinois primarily because he wishes to practice before the federal courts, and admission to a state court is a prerequisite for admission to the U.S. District Court for the Eastern District of Illinois. After failing his examination he asked for a copy of the exam along with his grade and the correct answers in order that he may better prepare for the next bar examination to be given six months later. His request was refused.

Upon this refusal, Mr. Martin-Trigona petitioned the Illinois Supreme Court for relief alleging that the practice of refusing to allow unsuccessful applicants to the Bar to review their examination papers was a denial of procedural due process protected by the Fourteenth Amendment since it amounted to withholding from an individual "the evidence and opportunity he needs to secure employment " (without any reason given for denial of the request).

Moreover, he contends it is arbitrary and unreasonable for the Examiners to hold examinations only biannually since it denies individuals frequent opportunities to qualify for admission (as is established policy in other state licensing examinations) without reasonable relation to the maintaining of professional standards.

Lastly, he contends that the questions chosen are based primarily on substantive law, and thus, discriminate against applicants who have studied in other areas of law or specialized in developing areas of law.

To these allegations the counter argument is that an aspiring advocate should be proficient in all aspects of the law and that the questions used on a bar examination are selected to establish the individual's fitness for practice in a particular jurisdiction through his knowledge of the substantive law.

There is no question that this is a legitimate defense for the mandatory requirement that an individual pass a bar examination as a prerequisite to licensing in a particular jurisdiction. However, Mr. Martin-Trigona's brief does not challenge the existence of bar examinations per se, but rather the existence of certain policies and procedures that have been established for administering the examination.

Moreover, it raises the issue of whether the questions in a particular bar examination by their very nature discriminate against a certain class of individuals.

These are many questions that are particularly relevant to us as future lawyers, for in the next few years, we will be part of the Bar and the policies and procedures that have been set up will be those that we subscribe to (at least implicitly) by virtue of our membership itself. It therefore should be of concern to us whether they reflect our conception of the requirements that are necessary for admission to the Bar.

It is not only our business as law students to gain proficiency in the law, but also to be concerned with the quality of our profession, what the profession does stand for and what we believe it should stand for. If we passively accept policies or procedures that we believe to be of no value in the making of a good lawyer, or that we believe to be discriminatory we are not fulfilling a part of our professional responsibility which is to maintain a constant critical awareness of the quality of our profession.

Mr. Martin—Trigona is one individual among many who saw something he believed was wrong and chose to challenge it. No matter what his motives may have been, or what we as individuals think of his point of view, the important point is that he did confront the procedures of an established institution.

Unfortunately, his challenge has and probably will remain unheeded because the great majority of law graduates have without question accepted the institutional procedures they must go through to become attorneys. But what if one hundred individuals filed briefs questioning the procedures of the Bar Examiners? Or what if a significant group of law graduates refused to take Bar Examinations until they were guaranteed review of their exam papers?

Right now these may seem big "what if's", but I do not believe the demands they represent are unreasonable. The important thing for us to be aware of is that they will just remain "what if's" and all the unanswered questions will remain unanswered unless we continue to raise them.

Charles Zinn Dead; Law Center Teacher

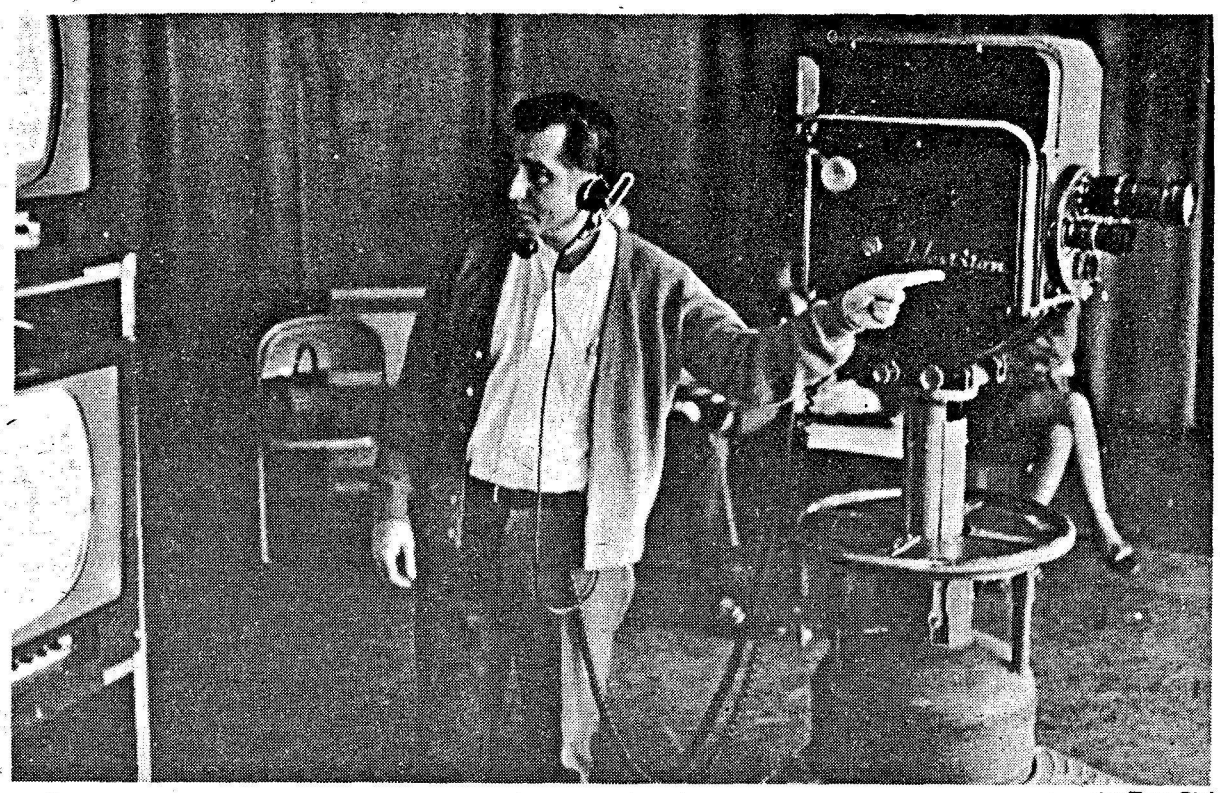
Dr. Charles Zinn, a lecturer at the Law Center since 1952, died on March 5 of a heart attack. He was 64.

Dr. Zinn, who had been serving as law revision counsel of the House Judiciary Committee, was scheduled to teach a course in Legislative Drafting at GW this semester.

Long an expert on the legislative process, Dr. Zinn believed that "making the laws of the land understandable is as important as making the laws."

Commissioner H. Rex Lee Explains

Licensing Media: The FCC's Dilemma



by Tom Blair

Following is an Advocate interview by Editor Craig Miller with FCC Commissioner H. Rex Lee.

ADVOCATE: What is the present status of the "blue book" standards? Whether quantity of standards of a balanced program has not been applied to a license renewal program as well as application proceedings? There appears to be more leniency on the renewal proceedings.

COMMISSIONER LEE: Well, I think there has been substantial leniency in the renewal procedure and I think the Commission is just beginning to tighten up a little bit, taking a much closer look at the renewal procedure. This probably comes about because of the events of the past year in terms of the Pastore bill and things of this nature.

That is, the Commission has had to sit down and analyze what was doing in the field and I believe that the Commission is going to take a much more careful look at renewals. My experience on the Commission hasn't been over such a long period of time, but I would say that since I've been on the Commission there's been a substantial increase in statewide renewal procedure—many more questions, many more applications turned back and a much closer look at the programming requirements and so on.

ADVOCATE: Some new regulations were promulgated recently by the Commission. Were these intended to sort of defuse the Pastore bill?

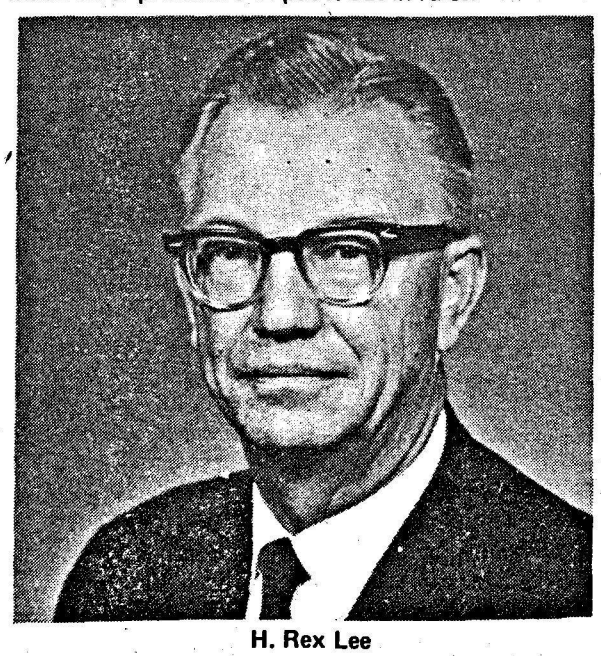
LEE: It's been interpreted by a lot of people like that, but I think it was a combination of...that is the Pastore bill did call attention to the fact that the Commissions's actions have been sort of erratic in this particular field and we had laid down certain criteria in some periods and other times no.

But I think the action of the Commission was a facing up to the fact that we did have to have some pretty clear guidelines as to what we were going to do in terms of these applications. We started to have, after the Boston decision, a rash of license challenges which put us right up against the question of how are you going to cast these in terms of public interest and service to the community and so forth.

I think the commission came out with a pretty carefully considered and well-balanced statement of the policy that they were going to follow. That is, if a broadcaster had given substantial service, meaning good and certainly more than adequate or medium service to the community, that would be a feather in his favor and we wouldn't simply take some pie-in-the-sky promise of a person that was completely new in the field.

We also promised not to use the renewal procedure—and I think this is quite important— as a means of achieving things like dispersion of ownership and things of this kind, will not use the renewal procedure to divest people of property that they have and so on, which I think is correct. I'm a great believer in dispersing ownership as widely as you can, diversity of views and so on, I think this is extremely important and I don't think you can do it by taking a case-by-case renewal and saying that "this person here has two radio and two television stations and therefore, even though he's doing an excellent service to the community, we'll give to this guy over here, because he doesn't have any and he's another voice."

It may be another voice, but he may be a very inadequate voice and so this I think is pretty important. Now if you are going to prohibit multiple ownership, if you are going to have only one to a market in terms of medium voices and so on, then it's a much fairer procedure to put it out in rules.



H. Rex Lee

And if you require a divestiture go ahead and give a reasonable time for divestiture so that you simply don't use the renewal process to knock off people because of these other reasons, aside from the reasons of good service to the community. I think we were getting to the point of uncertainty in the market that it had some real possibilities of upsetting programming and investments and things of this kind. That is, no one had any kind of a reasonable assurance of, even though they gave a standard performance that they were going to be in the business at renewal time.

ADVOCATE: Do you think that there is a conflict or an inconsistency between those regulations and the concentration of media ownership that Vice President Agnew seemed to be attacking in his Iowa speech?

LEE: I think you could say that there is an inconsistency, but the fact that we put out this policy isn't meaningful in relation to that statement in either way. For the simple reasons that we agreed as a Commission that if you are going to have diversity of ownership—if you were going to spread that ownership around much more than we have at the present time—that this wasn't the way to do it on an ad hoc basis at renewal time. The way to do it is to put out our rule and let everybody be heard on the thing, get all views and make a determination as to whether it's in the public interest to have dispersal of ownership than to do it in an orderly way.

I just don't think there is any relationship between Agnew's discussion of this and the stand we took. Now you could achieve, you could certainly use the renewal procedure to achieve widespread ownership of media but it just doesn't make any sense, in my opinion, and in the opinion of five other commissioners.

ADVOCATE: Do you think there's been a diminishing of criticism in the media—speaking particularly of TV, of the Vietnam War and the Nixon Administration since Agnew's speech?

LEE: I don't know. I just don't think I'm qualified to answer that. I've seen a lot of people that on the second go-round that there is less criticism of statements and so forth, on the other hand I think there is still a healthy criticism of it. It's possible that there has been some diminution in the amount of criticism—that it had some effect to make the networks and the station owners sit back and think through their processes, but I don't think that it's slowed it down to the point where you have a lack of healthy criticism of the administration, or of any other body.

I don't think that there is any question that his statement made everybody sit back and do some thinking about this thing. I suppose some people have pulled back completely just as I suspect that others haven't. I don't think there's any question that it's the initiative of news media, of people, to properly criticize the government.

ADVOCATE: Has there been any kind of a discussion or a re-consideration over what I've heard termed the "wooden aspects" of the Equal Time provision as applied in the case involving Senator McCarthy, where the man has to be a candidate to grant the other side equal time? I'm thinking of this in terms of the criticism that's gone on recently of the monopolistic use of the media by the President. The Democrats were granted equal time, but of course it was the old media rule that the stations had the right to choose the time and it was not on prime time as the President was.

LEE: This is, of course, something that's open to discussion at any time. There hasn't been too much in recent months. I suspect that we've been preoccupied with too many other things, of a more pressing nature and I'm sure that this will heat up as the elections approach. It always does. I came into the Commission the week before the general election—that was the 1st of November—and the Commission has spent virtually all of the time going over protests from various areas of the field on equal time and fairness and everything else, and this sort of intensifies itself when you have a big issue that comes up and so on and so forth, hasn't been too much recently.

As I said, I guess we've been too preoccupied with other projects. I'm sure it will heat up now again though this year; it's bound to.

ADVOCATE: On the matter of the license renewals, my impression has been that it's very difficult for the Commission because of the fact that there are just so many renewals and I wonder what would relieve the situation for the FCC? Could you do it with more manpower? Would this be the solution? Or would it be feasible now to scrutinize these applications more carefully?

LEE: I think it would be possible to and I think it is basically a matter of manpower and I think it also is basically a matter of the philosophy of the Commissioners. The majority of the commissioners want to scrutinize these renewal applications closely, consider whether they give good service. I think I can say, without much hesitation, that at the present time the Commission simply is not equipped to do the kind of job that I think should be done in the public interest in this field. I told you a few minutes ago that I thought we were doing much more in the renewal field and that we were looking at these much more searchingly than before we considered the policy statement on renewals, even before the whole fuss about the Pastore resolution came up.

But we have an extremely limited staff. We've had one field investigator in the time that I've been in the Commission. With several thousand stations on the air this doesn't help.

The best we can do is we can look over our complaint files. If the people in the community are on their toes and file complaints with the Commission about poor service or misuse of the media in their community we have something to ask a question about.

Don't misunderstnad me, if you had an unlimited staff, if the FCC were just permitted to hire all the people it thought it needed to have and could review all these stations -- I think it would be very bad. You'd intimidate them, you'd cut down on their initiative, you'd substitute people's judgment in this agency for people who are in the community and so on and so forth.

So we go through and pick and choose and if on their renewal application there is over-commercialization or they're doing very little in the way of news then we can go back and ask questions. If there have been various violations of the rules which have been logged up in our complaints and compliances, this again gives us just enough of a clue to ask questions. In terms of going out in the community and seeing whether those people are serving the community -- there's no time for that.

(See THE FCC, p. 8)

Editorial

Public Control: The Only Solution

"But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of broadcasters, which is paramount....It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC."

(Justice White in Red Lion Broadcasting v. FCC)

To manufacture automobiles which stifle breathing and fall apart in five years, one need not worry about statutory and legal requirements that the business operate in the public interest. And although specific statutory and legal safeguards have been designed to guarantee that broadcasting rights be limited to what is in the Public Interest, manufacturers of the opinion process are allowed to pollute the mind as long as the same shoddy goods are sold to a captive, passive audience. At a time when entertainment, ideas, and even Presidents are packaged and sold over the public's airwaves, it is time to cast about and determine who will be the guardians of the public interest.

Where are the protectors of the public right to receive information? Recent events have indicated that the First Amendment may be preserving only the rights of the broadcaster to speak. The Justice Department has subpoenaed photographs, reporters' notes, network news film, and the disclosure of sources, while the public has been compelled to depend upon the owners of the media to resist such pressure and guard the right of the public to access to information. Looking for protection at the FCC, the public sees that agency's Chairman demanding that the networks submit transcripts of criticism of the President who appointed him to the public agency.

Dependence of the public upon broadcasters who would provide access to divergent views of Nixon administration policy found no protection from broadcasters, who have yielded to the scolding of the Vice President. Press conferences, and Presidential statements after the Vice President's Iowa speech have been free from discussion and criticism by those who would supplement the President's monopoly use of prime television time with a range of opinion from which the public might choose. The massive November Anti-Vietnam War Moratorium received only token coverage, while the much smaller Moratorium events in October had gained substantial access to the media. Owners of the media clearly were without the stamina to guard the public interest against Administration pressure.

Indeed both the Vice President and the FCC went on to make certain that the monopoly control of the opinion process (which the Vice President had criticized in his Iowa speech and the FCC had denounced in its WHDH opinion) would be expanded. The Nixon Administration appointed two pro-industry members to the FCC, and the FCC then promulgated new regulations which would reassure the media barons that their licenses (often termed "licenses to print money") would be safe from competition from public interest advocates.

What has happened to the affirmative duty of broadcasters to present balanced coverage of controversial issue of public importance? The President uses prime time to present administration opinion, and his views go on the air uncontradicted. The "equal time" provisions protect only candidates for office, so the opposing party gains inferior access to the airwaves on a Sunday.

News is sandwiched between Nasograph and stomach acid tablet ads so that the public hears about half the front page of the New York Times for its news allotment. Documentaries are virtually absent from the screen, for they might alienate sponsors and arouse some of the public. Discussion of the issues of the day is presented as "tasteless gruel," designed to anger as few people as possible. One hundred and fifty minutes of creative news coverage by network staffers is boiled down to fifteen to twenty minutes of headline shorts. The Smothers Brothers are censored from the air, and CBS shows "I Love Lucy" reruns instead of the controversial Fulbright Vietnam hearings. Minority tastes must seek entertainment and expression elsewhere, and creativity is smothered under the weight of "what sells."

There are some hopeful signs for returning the airwaves to the interest of the public which owns them. The Public Broadcasting Act of 1967 has provided a possible basis for public access to programs which will cater to minority tastes and offer programming governed by considerations other than their usefulness in selling goods. The United States is still at least ten years beyond countries such as England and Canada in the public broadcasting area, and it remains to be seen whether dependence upon the Congressional budget will hinder the presentation of controversial issues.

Cable television offers perhaps the most attractive possibility for returning broadcasting to the public. Thus far, CATV has been largely limited to plugging into distant network outlets and has even created a danger to local public interest programming. Plans for use of CATV to permit local programming by private groups has created the possibility for what FCC Commissioner H. Rex Lee has called "forty, eighty or 120 channel bands" available to the television viewer. Commissioner Lee envisions the use of CATV by minority groups in the classroom and the home so that the viewer could tune in a symphony, a panel discussion, the stock market reports, and even the daily newspaper (either making the press obsolete or providing the possibility for many small publications to be perused by the viewer).

If CATV does develop along the lines noted by Commissioner Lee the possibilities are encouraging for revolutionizing television to permit access for the public to speak as well as listen.

In the meantime, there is a need for the public to reassert its interest in the use of the media. Operations such as Mr. Kramer's Citizens Communications Center are understaffed and under financed. The United Church of Christ case has offered legal access to public interest groups to storm the FCC with complaints and proposals for a redress of grievances against licensees of the public airwaves.

The FCC must be exhorted to make effective use of the renewal proceedings on licenses, use the "blue book" standards to create a meaningful breakdown in programming to cater to minority tastes, follow the reasoning in the WHDH case to break up the media concentration denounced by the Vice President, and effectuate stiffer regulation of over-commercialization and insufficient presentation of news and documentaries concerning social problems of the day.

At present, the public interest appears a victim of the "planned obsolescence" purveyed by the media barons.

Dave Schlee

On Pass/Fail:

Last spring the students of this law school overwhelmingly rejected a proposal which would have established universal pass/fail. There were many sound reasons for doing so.

A pass/fail system encompassing the entire curriculum could be detrimental to the quality of legal education at the Law Center and consequently to its reputation as a national law school. Further, the change might heighten student uncertainty as to his mastery of the subject matter.

But in response to student pressure the administration allowed students to take a limited number of advanced courses on a credit/no credit basis. This I feel is a misapplication of the pass/fail idea, with the result that it has become little better than a joke.

Pass/fail can serve a legitimate educational purpose. Apparently the administration, without giving too much thought to the matter, has chosen to ignore the real effects of pass/fail. It has chosen instead to apply it across the board without regard to the nature and importance of the subject matter or to the manner in which the course is structured.

Most courses at the Law Center are structured around a casebook-final examination approach. When these courses are taken on a credit/no credit basis, the natural tendency is to put off reading the casebook and take the final examination after a brisk reading of Marty Ziontz.

Naturally this is not the most effective manner in which to gain an understanding of the subject. When it is allowed for courses which are admittedly difficult, but also of great importance to the student in his legal career, it's obvious that something is wrong.

What is the utility of providing 'free' credits in this manner? It would seem more logical to cut the number of credits required for graduation.

The proper solution of course is to fit pass/fail into situations where it will enhance the educational experience rather than detract from it. Certainly the farther one goes from the one final exam concept, the more chance that pass/fail will be successful. Breaking the course down into a series of smaller examinations, writing assignments and other exercises would vastly increase its educational potential in a credit/no credit environment. A higher level of discipline would be enforced on the student, and a great deal of pressure and uncertainty would be relieved.

Pass/fail also fits easily into courses where there is a high degree of independent work involved or where the work is of a clinical nature. Here grades would serve more to stifle independent thought rather than to encourage it, and grading systems would be much more prone to inequity because of the high degree of personal contact between student and professor and the lack of an adequate standard by which to grade the class.

It is clear that from an educational standpoint it is possible for pass/fail to apply to almost every law school course. It would certainly be reasonable to offer even first-year courses on a pass/fail basis if the faculty could be persuaded to devote more time to the constructive evaluation of the work of their students. This, of course, would be entirely too much to ask of a faculty already straining under the weight of its devotion to quality education.

But while pass/fail can be successfully employed without any real detriment to the educational process, there are external considerations which must be taken into account. Those who hire law graduates apparently need some shorthand method of evaluating their applicants. In the past grades have supplied this method, and have served to 'weed-out' those who are below the minimum employer standards.

This consideration must be balanced against the advantages of pass/fail, and it seems to me that required courses may have to remain on a graded basis for this very purpose.

Certainly however, there is no reason why an unlimited number of non-required courses cannot be offered on a pass/fail basis. This would necessitate the scrapping of the one final exam concept, and would force the faculty to devote more time to its students. But these things are hardly above discussion.

Letters to the Editor

Correction

There are two errors in the Advocate regarding my position in the debate with Professor Tigar.

First, I did not "surrender" my "initial position" by saying that a lawyer can be selective in his choice of clients. I have always taken the position that a lawyer can properly be selective.

Second, I did not say that the adversary system is its own justification or that it serves no higher purpose. On the contrary, the major premise of my argument, and the issue to which I devoted most of my time in the debate, is that the adversary system is essential to the protection and advancement of human and civil rights. These are the moral values that I place above my personal feelings or judgment about a particular client.

This is indeed a moral decision, and one that can require considerable soul-searching, both in general and in specific context. I am convinced, however, that to act in conformity with this decision is to serve the public interest with far greater fidelity than by betraying an unpopular client by giving him something less than your most effective advocacy.

Monroe H. Freedman
Professor of Law

White on Green

I was outraged to see Prof. David Green's letter printed so close to your article on St. Elizabeth's senior citizens. Professor Green's gentle inanities speak for themselves, without the need for your editorial implications.

Richard G. White

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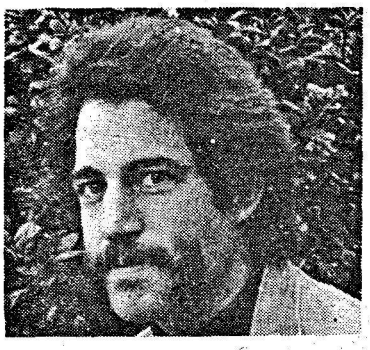
'How America Views Dissent'

Douglas Probes 'George III'

by Rodney J. Borwick

Justice Douglas has just completed the first of three volumes dealing with dissent and rebellion. This first work, "Points of Rebellion," is divided into three parts. The first is titled "How America Views Dissent," where Mr. Douglas speaks of "the diminished man"—an individual smothered not only by the diminution of first amendment freedoms but also because of advancing technology, the expert and the computer.



Because of the turn our society has taken, Justice Douglas claims that we as individuals "are inhibited when we should be unrestrained. We are hesitant when we should be bold."

He sees youthful dissent as simply a "reaffirmation of faith in man. It is protest against living under rules and prejudices and attitudes that produce the extremes of wealth and poverty and that make us dedicated to the destruction of people through arms, bombs, and gases, and that prepare us to think alike and be submissive objects for the regime of the computer."

In part two, "The Legions of Dissent," Mr. Douglas remarks that rather than learning to work together on a national and international level, we seem to be going the other way. He calls to mind the youthful dissenter in Japan who sees his country's interests being aligned more closely with American militarism and the German student who, inflamed at our use of napalm in Vietnam, asks "It's a war crime, isn't it?"

In 1969, Justice Douglas received a letter from a GI in Vietnam. This soldier remarked that "somewhere in our history—though not intentionally—we slowly moved from a government of the people to a government of a chosen few ... who either by birth, family tradition or social standing, a minority possessing all wealth and power, now ... control the destiny of mankind."

Because there is no one to turn to for redress of grievances, says Douglas, and because the two political parties have become almost indistinguishable—each being controlled by the establishment—modern day dissenters and protestors are functioning much as the loyal opposition functions in England. They are the mounting voice of political opposition to the status quo calling for revolutionary changes in our institutions.

In part three, "A Start Towards Reconstructuring Our Society," the point is made that the bias in many of our laws must be changed. First, law designed to "help" the poor must be made to do just that. Second, the special interests that control government's use of power to favor itself against the many must be altered.

"Violence of course has no Constitutional sanction and every government from the beginning has moved against it. But where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response.... We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress honored in tradition is also revolution."

This book says nothing new although in the last two quotations it makes old points well. However, those who like what is said will like what they read because they already agree; while those who are more conservative will not have their minds moved to the left by the book.

The reason for this is that Mr. Douglas does not take the time to explain his terms or his premises. For many readers the statements that when most of the elected officials represent the Establishment the only recourse may be violence may seem at least odd. Why, they will ask, should violence be used on representatives who while representing the Establishment, also represent me; for am I not a member of the Establishment majority? Justice Douglas doesn't take the time to discuss the subtleties of this argument or even define what he means by Establishment. But really, why should he? He is not writing for people who do not know what he is talking about and of course those who do know have heard it all before.

What purpose then does this book serve? In part, I think it was something Mr. Douglas had to write strictly for himself. It may be that his feelings had to spill out on paper simply because they needed to be released after a long period of dealing with people with whom he could not communicate. One gets the impression from the book that it was written within a very brief span of time as if his thoughts had swollen to the point where they could be contained no longer.

If this is the case the book reminds us of an important fact. That is, the line between writing about revolution and acting it out is a very fine one. When the writing of feelings and the expression of opinions becomes no longer enough of an outlet to diminish one's frustration the only recourse may be to stand in the ranks in a Chicago street and allow the Democratic convention to debate the functions of Democracy which they themselves made meaningless.

Hogs, Cows, and Colored Folk — Montgomery County Racial Equality

by Jack Smith

One often has the tendency to look to the suburbs of Washington as veritable bastions of liberality. Located within these enclaves are many of the governmental officials, professional men and business leaders of our urban center. These focal points of power in government and business often live in the more leisurely, less involved pseudo-splendor of the well-kept zoysia lawn, the filtered swimming pool, and the double-grilled barbecue pit. On the level of extreme superficiality, it all sounds pretty good.

I must admit that the superficiality syndrome is not one to which I am entirely immune, and it was during a particularly severe relapse that I decided that it was time to look for a home in Montgomery County.

The subdivision that we chose initially sounded good and was euphemized in a booklet describing the community as a "rather special enclave, charmingly isolated in the midst of a swirling, growing suburban area." I could nearly smell the charcoal-broiled steaks and hear the bubbling of chlorinated swimming pools when we started our search.

The first — and I might add the last — home that we looked at in this "special enclave" was indeed a lovely piece of property. With two fireplaces (one inside and one outside), good schools, and enough churches to convert every heathen friend I have, I was sure that I had found my niche. Enough of the radical life for me, I was ready to buy my castle, decerebrate myself with martinis, plant my crocuses, and wait for spring. To hell with relevancy, I was going to be a landowner.

Since we landowners must stick together, I decided that the next logical step would be to pay a visit to an officer of the council of the subdivision. During my visit, I was given good wishes, a friendly handshake and a copy of the "Charter, Regulations and Covenants."

This last gift was — and still is — a rather special document. It consists of 22 pages in which it describes special assessments, the belling of cats, the control of weeds, the covering of swimming pools and a rather interesting set of seven covenants. The covenants were contained on page 22 (the last page) of this booklet, and the very last covenant read as follows:

"Covenant No. 7." "That the above described property, either before or after improvements are made, cannot be sold, rented or leased, or otherwise placed in the possession of a colored man, or one of the African race."

Just to keep that covenant in proper perspective, the entry directly above it read:

"Covenant No. 6." "That no pigs, hogs or cows shall be permitted to be kept upon any lot in the subdivision."

Putting humanitarian concerns aside for a moment, I was still enough of a scientist to realize that the Darwinian scheme of evolution had, in its wisdom, placed humans above the pigs, hogs and cows — at least in areas outside of Montgomery County.

My first impulse was to assume that the booklet must be so ancient that such a nauseatingly historical covenant was still included. The booklet, however, was issued in 1968.

In all fairness, an introduction to the covenants noted that Covenant No. 7 was rendered unenforceable by a 1948 U.S. Supreme Court decision.

One can certainly ask, however, why such a covenant is still published? If it is indeed unenforceable (as admitted in the booklet), why is it yet included?

I can conceive of a few reasons. First, it might just be so historically significant that it must be continued. You know, like the Declaration of Independence and the Constitution, people may just like to have Covenant No. 7 around where they can look at it. Secondly, since covenants may be construed as private contracts, it could represent an unenforceable understanding between the residents. Thirdly, it could act as a deterrent to the purchasing of a home by a "colored man, or one of the African race."

I can hardly assume that Covenant No. 7 is included simply as an oversight representing the collective intent of county residents long since delivered to that great Klan meeting in the sky.

So, in the meantime, I will look for a home elsewhere. I will remove myself from that rather special, "charmingly isolated" enclave.

It seems that all my sheets are in the laundry, and besides, some of my best friends are pigs.

Afro-American Journalism Grows Up

Black News: Seeking Racial Directions

by Joe Roberts

The Black press has been described as the most successful business enterprise both owned and controlled by Negroes. Its rise in circulation to almost ten million a year and the growing national advertising in these papers seem to indicate prosperity and growth of a proud facet of American journalism that few white people have even heard of or seen.

The established Black press however has suddenly discovered (as has the NAACP and the Urban League) that it is no longer the true spearhead of the movement for racial equality. With the rise of militant groups and demonstrations coupled with the increased daily press coverage of the Black community in the large white dailies, the Black newspapers are having to re-evaluate their programs and policies to see how they can better relate to their readership.

Today's problems of the urban Negro include employment, housing, welfare, and health. All of these areas demand high technical knowledge and skill in their interpretation which the Black press must develop. This means, in part, larger staffs and a higher degree of professionalism within the press.

The Black press must re-evaluate its purposes and responsibilities. Enoch P. Walters, editor of the Associated Negro Press states that one who sees forty or fifty Black newspapers begins to grow weary because of the sameness of them all and the narrow rut in which they operate. It is as though they are all following a formula that someone has said will bring circulation, ads, and wealth. There is just too little creativity and imagination.

Walters continues that there is a responsibility beyond merely carrying reports of the NAACP, Urban League activities and columns of Whitney Young and Floyd McKissick. With the rising literacy and militancy in the Black community the readership is demanding to be better and more accurately informed. No one view is able to give the community the individual attention it requires. Publishers and editors must break-out of the "NAACP syndrome" and press ideas and suggestions that will best serve the community. Not to do this will certainly be the demise of the Black press.

Simeon Booker, the Washington Bureau Chief of Johnson Publications (Ebony, Jet, Tan) views the re-direction of Black news media to be that of becoming more locally involved. He points to the fact that Ebony has taken over national circulation from the Chicago Defender, Afro-American and other once national newspapers; in turn these papers have re-directed their efforts on a local scale. The Washington Afro-American, for example, in past months has been working with the Black United Front to try to block the WMAL-TV license renewal. Other Black newspapers are becoming immersed in local news coverage.

The Black press must also direct itself more to the lower income members of the Negro community.

In a study taken at Howard University, students were polled concerning the effect of the Black press. While almost all read a Black newspaper few felt it was reaching a total Black community. A comparable situation can be found in the television show "Julia". How many lower class Blacks can identify with Julia in her plush, integrated apartment? In the same way the Black newspapers are failing to reach a large sector of the Negro community and it still remains to be seen whether the Negro elite can operate the Black news media effectively and responsibly.

The re-direction process has, however, manifested itself in a few areas. The Black newspapers have been allowing a growing degree of access to its pages; taken as a whole the Black newspapers are probably the most democratic of the modern news media. The recent support of the Black Panthers and the usually large and diverse letters-to-the editor feature along with such sections as "Dear Afro-American Patrolmans' League" which present both praise and criticism regarding police are signs of a re-direction in the Black press. This re-direction must continue and the focus of the Black press must be defined in the context of each local Black community. Failure to do so will end the proud history of a fighting press.

On September 15, 1969, Law Center alumnus J. Edgar Hoover presented a check for $15,000 to the GW Law Library Fund on behalf of the J. Edgar Hoover Foundation. Shown left to right are: Dean Kramer, Mr. Hoover and Alumni Director Cliff Dougherty. Thanks to such contributions, the Library is nearly paid for.

The FCC-from p. 5

Balancing Economics With Aesthetics

ADVOCATE: Is there much more of this community type of involvement, since the United Church of Christ case...?

LEE: Yes, I think there's been a substantial increase in that. I think that is good. I think the communities are becoming aware of the fact that they do have a stake in what's being broadcast in their communities; they can go in and talk to their broadcasters, can complain, and if problems in the community are not being discussed, if they are getting inadequate news coverage I think the people are beginning to awaken to this. I don t think they're awakened to the point that they should be.

ADVOCATE: You mentioned over-commercialization before. What can be done at this juncture to stimulate more news coverage and more documentary-type programming on the stations. I'm always disturbed when I watch the news and the entire evening news is 15 or 20 minutes of Cronkite spliced between Nasograph ads. Is there anything that can be done? I know you don't dabble much with the individual programs.

LEE: We encourage general improvement in programming, and as far as more news we can encourage more public service-type programs. On this very matter of renewal, you can look at the list of renewals that are coming up and you'll find that some of the stations out in the small communities are spending 20-25 minutes on commercials.

Immediately you yank back and say to yourself this is terrible we have to do something about it. They shouldn't be spending almost half their time on commercials. Then you dig back into the thing and you're probably dealing with a station in a small community that is probably on the margin as to whether they'll have a station or not, it's very unprofitable, and you'll also find that in order to service the needs of the community, advertising-wise that their rates are low and they are what you and I would say at first blush is a completely over-commercialized station.

When you start looking at the hard economics of the thing, it just isn't that simple. Get up to the networks and you're talking about some programs that you or I might consider to be excellent programs that serve the community, and many of these are losers in terms of money. They'll make it up on something like "Bonanza" or "Name of the Game" or something of this kind, but they lose it on what you would consider to be a real service to the community.

And here again this goes back to the question of how many people watch it. You and I might like to have some solid programming in terms of issues of the day and yet may be a complete loss as far as the producer is concerned and they have to carry something that has wider popular appeal.

ADVOCATE: Is there anything that the FCC can do to stimulate the catering to minority tastes?

LEE: I think in terms of catering to minority tastes, the FCC is doing a lot. We've said that on the ascertainment of community problems that they have got to cover all of the community, that they can't simply hit a few highlights here. That they've got to go out and find the problems of the community and I think we're finding that most of the broadcasters now are really covering the waterfront.

They're going out in the communities and finding out what the problems of the minority groups are and they've tried to put on programs that will help in these situations. I don't know whether you've noticed or not, we put out a proposal on a new primer of community needs. By the time a guy goes through this he's known he has got to consider everything in the community and that he's got to come into the FCC with a pretty good survey of the community needs and problems. I think that there has been an increasing awareness of this, this past year.

ADVOCATE: Has there been any movement to break down the areas? For instance, you take Entertainment and break it down into classical music, popular music, etc.

LEE: This is very difficult. It's been talked about I'm sure on the Commission ever since the days when they first started handing out licenses, but...

ADVOCATE: Is it a manpower problem again?

LEE: This has been discussed many times in the Commission's history, since they first started handing out cases, but I don't think it's practical. After all, I don't think there's any commissioner that is smart enough to allocate these out in such a way and dish out and tell people what they should program for and have any kind of a viable economic set-up. I don't think we're that smart.

If this were public broadcasting and we had some people here that were deciding what the public should listen to, then you'd have five stations and make sure that they covered the entire waterfront. This isn't possible in a kind of a set-up that we have supported by advertising. Just can't be done.

Local TV Evades Fairness Doctrine; Peace Committee Denied Commercials

by Leonard H. Bloom

The film alternates between color and black and white sequences. It shows a pretty, young girl sad and alone (in black and white), then happily enjoying the company of a young man (in color). The black and white scenes alternate with the color scenes, as a voice says the following:

"Remember your first love?...

Christina spends her time trying to forget, but can't. For every draftee that goes off to war there is a Christina left behind – sometimes for good."

The film ends and the following name and address apears:

Friends Peace Committee
2111 Florida Avenue, N.W.
Washington, D.C.
Over this a voice says:

–There are legal alternatives to military service. You may be entitled to one of a number of deferments provided by law. For information write to this address.

This advertisement was recently submitted to three Washington television stations: WTOP, WMAL, and WRC, by representatives and advisors of the Peace Committee of the Baltimore Yearly Meeting of the Religious Society of Friends, to balance the one-sided presentations for military service that these stations broadcast.

In March of 1969, Robert Katzberg, a GW law student, was doing a law review note on the fairness doctrine and became interested in the "outer limits" or possible extensions of the fairness doctrine.

He was particularly interested in reaching military recruitment advertisements, by getting air time for announcements stressing alternatives to military service. The first problem that was faced was the need to locate a representative of a qualified group that would have both the proper interest and legal standing necessary to obtain time under the fairness doctrine. He was referred to Professor David Green (of the Law Center), Chairman of the Peace Committee of the Baltimore Yearly Meeting of the Religious Society of Friends. Professor Green related that his group had been seeking to express its opinion on the war in Vietnam and military recruitment.

The next problem was obtaining a lawyer of record in case papers had to be filed with the FCC. Albert Kramer, Executive Director of the Citizens Communications Center of the Robert F. Kennedy Memorial, agreed to lend both his expertise and name to the project. One more GW student, Ralph Grebow, then joined the project. In December of 1969 letters were sent to the three television stations requesting time under the fairness doctrine to balance the one-sided presentations of military recruitment shown on the air by informing the public as to the possible legal alternatives to military service.

The stations replied that they already met required standards, but that they were also interested in meeting with the Peace Committee and exchanging ideas. They maintained that by exposing all the views on the war in Vietnam on news broadcasts and other programs, their responsibilities were fulfilled. The stations, in an apparent move to determine the resolve of the group, asked for specific advertisements to be submitted.

It took almost three weeks before any response was received. Finally, WTOP rejected the advertisement, but offered a compromise solution, which in essence evaded the fairness doctrine question but did serve to provide air time for the presentation of the group's point of view. The proposal contained two parts.

First, there would be a three to five part series with the Peace Committee explaining their function and purpose, to be shown as interviews on various news broadcasts.

Second, there would be provided a full one-half hour on prime-time t.v. to the Peace Committee, and it was tentatively suggested that this would take place on "Martin Agronsky's Washington" program.

The group decided to accept this offer from WTOP. The licensee has wide ranging discretion to present various positions of controversial issues as long as such coverage is "adequate."

The group believes that the time which WTOP has offered to provide is adequate to present its views, taking into consideration the approximate total air time which military advertisements involve.

Also, the group would probably fare no better under an FCC ruling. At this moment the group is waiting for responses from the remaining licensees.

Broadcasting-from p. 1

Media Denies Individual Creativity

television (advertising costs are computed in product unit price, consumers purchase television sets, etc.), we are presented with the inequity of people subsidizing intended mediocrity in television when they purchase consumer goods.

Contradiction

The effects of this situation are becoming more visible as television enters its third decade. First, rapid industrialization has markedly intricated our environment, while at the same time communication and transportation networks have converted the globe into a village. This massive increase in social complexity accompanied by a displacement of physical contexts has profoundly affected the individual indentities of the bulk of our society.

A new class structure has emerged dividing those few who derive a role in the current commercial format of television, and the masses of viewer-consumers. Thus the photogenic pitchmen receive a grossly exaggerated social identity and importance, while the majority of citizens suffer from severe anomie and feel helpless and even nonexistent as participants in the mass consumer society.

Loneliness is the greatest problem in the United States today, because the quasi-catatonic state TV produces deprives the people of a creative realization of their true potential and leads toward aberrational behavior. The only stimulus one receives is the perverse drive instilled in him by television— through the acculmulation of goods he will be recognized.

Another crucial contradiction in our post industrial state is that as we move more and more toward a leisure dominated society, the economic roles which have traditionally delineated our class structure tend to break down, since there is no longer a credible justification for the carrying over of elitist relationships which originate on the job. Thus in order to sustain power, the managerial interests must intensify through television the popular fixation with various consumer goods and recreational outlets. To absorb any inquiry, scapegoats and hyped nationalism are funnelled out.

Any rational programming format must begin with the fundamental proposition that every man is unique, every man is an artist, and the work product of every free man is an art form. It is through the examination of the collective work product that we determine the consciousness of the society.

Currently, the individual is deprived of the right to enjoy and exhibit his art form, and suffers from less of incentive and alienation consequent from such deprivation, because the commercialization of the public forum has tightly defined what is art along sale potential lines. The mediagenicity of various art forms is further exclusified by the intentional mediocrity of programming.

If television were to begin to display the importance and the artistic ability of the common man relative to the habitational and mass communities he exists in, we would see a reality of having every individual believing I AM SOMEONE. Once this initial affirmation is made, society itself will begin to transform from a mostly potential mass into a radically kinetic productive force, and community itself will shrug off the restraints of such counter productive forces as politics, elitism and the bureaucratic manipulation of man by man.

Narrowcasting

Such a programming schedule will of necessity call for narrowcasting—the transmitting agent will have to be from within a social group small enough for the viewer to identify with personally. Broadcasting defeats communication since it operates under the proposition of one-to-many and denies participation to the receiver. Narrowcasting equilibriums will demand quality, community control, and a fraternally productive society.

Skeptics call such planning utopian, but I fear such people have fallen into the traps today's masters have laid for them by believing that history is over. Technologically, narrowcasting will both decrease costs and improve quality. Currently, the greatest operating expense in broadcasting is the interconnection fee charged by the telephone company to hook network affiliates with their central units along telephone cables. Advertising absorbs this expense and in addition, the maintained scarcity of channels licensed by the F.C.C. gives broadcast licenses tremendous leverage in setting fees for commercials. And, of course, the cumulation of these fees are passed down to market price per unit product.

Communications satellites are capable of replacing telephone cables, and will provide better global service at much lower costs. And narrowcasting per se demands a fully developed 82 channel band, so that divergent community interests will be served. Complete band telecasting is technically feasible with our current television equipment, through a judicious use of VHF, UHF and cable outlets.

Implementation

It is idealistic to expect Congress, the Commission or the industry to act ab initio or in response to petition, to democratize television; few groups in power choose to define themselves out of power. Each of these institutions would be under enormous pressure from various sources to maintain the status quo. Our task, then, seems to call for the application of countervailing pressure.

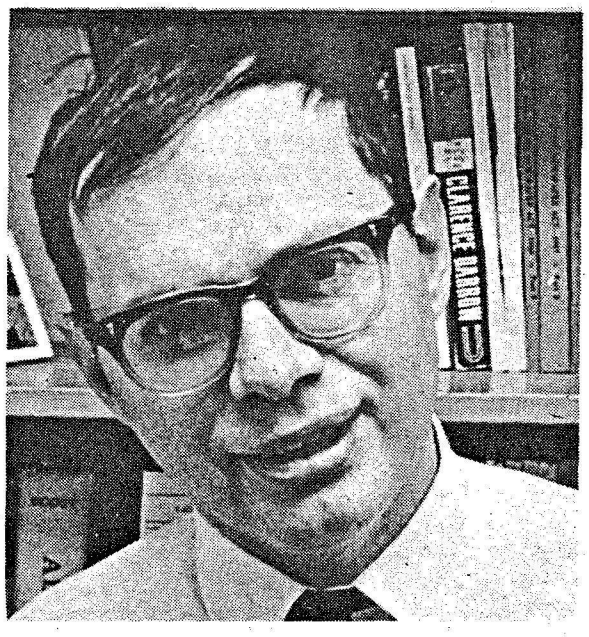
There are several possible avenues. Already a show, "Sesame Street," is having great success in introducing the concept of narrowcasting. All efforts ought to be made to protect this show and promote similar shows on other networks. A second route would be the operation of a station which would employ a full narrowcasting method. Hopefully, this would create a new consciousness in the viewing public.

I'm uncertain about the effectiveness of such efforts; rather than attempt to improve aspects of a commercial television environment, it may well be advisable to ignore it altogether, and build for the future. This latter suggestion would encompass everything from using the technique in pre-school child centers and throughout educational institutions, to direct action which would clarify the role of the manipulators of television.

Free Jim Coleman

Interview-from p. 1

Exploring the Ethics of a Monopoly



by Tom Blair

JEROME BARRON

think that it's necessary to take some legal steps (with regard to) the monopoly newspaper which, for example, is a feature of most of our large cities today -- New York is an exception and of course, even in New York, the decline of the press is a phenomenon we're all familiar with.

DANIEL: Those who advocate that these principles of fairness be applied to the press have lately been encouraged by the opinion of the United States Supreme Court in the so-called Red Lion case. Several sentences in the Court's opinion, written by Justice Byron White, seemed to support Proffessor Barron's point of view.

"It is the right of the public," Justice White said, "to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences." Scotty, as a newspaper columnist and executive, would you agree that there is a right of access to the press and that it should be enforced by law?

JAMES RESTON: Well, I would agree with the first part of the sentence, but certainly *not* the second. I agree with what Professor Barron has said, that we have to look at these things in the context of the time. And at the present time, I think there is perhaps more debate going on in this country about human relations, and relations between institutions and the individual than perhaps at any time almost since the days of the Reformation. So obviously there has to be access, but if you are asking whether I favor turning over the editing process to cops and judges, the answer is certainly not.

DANIEL: Let's go the point you just made. Is, first of all, Professor Barron's premise valid? Dick, is there a substantial lack of access to the market place of ideas?

JENCKS: In my judgment, no. I have seen no survey of the press, whether the print media or the broadcast media, that would suggest in any terms whatsoever that there has been a lack of access if what is meant by that is media neglect of the important issues and personalities of the time. Indeed, I would go so far as to say that never before has the press in this country been so eager to present and report variant and dissident views, however unpopular or repugnant they may be to their readership or viewership.

DANIEL: Jerry?

BARRON: Of course, I disagree with that. And I think I should explain exactly how I disagree with it. Certainly our viewers and those of us on this program say, "Well, certainly we've never seen so much disturbing stuff in broadcasting, in the newspapers -- anywhere we turn -- than we have presently." I would say, "Exactly." Now, you might say, as I think you are suggesting, "Doesn't that prove that anything, no matter how much we might find it objectionable -- can really have its day?" Well, I would say no because it has its day in a very curious way, in a very warped and jaded way.

In other words, when you try to get something covered from a protest or a minority point of view in a routine fashion, I think it's q iite difficult. Sure, once you break a store window, once you have a small riot going, the cameras are right there but I think that's a very important distinction to make in terms of what kind of access I'm talking about.

Now, the Kerner Commission, in contradiction to Mr. Jencks, talking about coverage by the media of black and white relations, said in terms of riot reporting, they couldn't find anything to fault the media on. But in terms of day-to-day reporting of what is going on in the black community, in terms of the blacks as people, they found the media seriously at fault.

DANIEL: But do you think, Dick, that having mentioned that there are seventy licensees in New York, do you think that radio and television are discharging their obligations as custodians of the airwaves? Are they doing as well as they should, or is further regulation, control necessary?

JENCKS: Well, I assume, Clifton, that you're directing that primarily to the area of news and public affairs.

DANIEL: Yes.

JENCKS: I think many broadcast licensees -- most broadcast licensees are doing a good job in the area of news and public affairs. Surveys repeatedly show that the public not only relies heavily on broadcast news, but has an extremely high opinion of its objectivity and fairness. Again and again over the years, the public has so indicated. Many people complain that there is not enough time given to news and public affairs in broadcasting, and certainly there are stations with respect to which that claim can fairly be made. That's another big subject as to whether broadcast stations ought to be diverse in the service they provide, and whether they all ought to have a quota addressing itself to news and public affairs. But in general, I think they do a good job, and I'm, I must say, from a parochial standpoint, particularly proud of not only our network news organization but those of our competitors.

DANIEL: I was going to ask in that connection whether the Paleys, speaking of CBS, or the Sarnoffs and others speaking of NBC impose their own prejudices and predilections on public affairs broadcasting.

JENCKS: Well, in my experience, they do not, and that is the testimony, I believe, of not only most of the people who have written and talked about the subject, but most of the professional newsmen themselves.

BARRON: I would like to respond to that. I think that the process is a much more subtle one. I do not accuse the broadcast -- the three broadcasting networks and their presidents of getting together or operating separately to form the thought patterns of two hundred million Americans. I don't think it works that way. I think that broadcasters are essentially people who sell time to advertisers. I think newspapers are essentially people who sell space, white space, to advertisers. I think that on the whole, people in both camps, the newspaper camp and the broadcasting camp, are people who don't give a rap about ideas one way or the other, that they're interested mainly in making money.

The way you make money is to talk about those ideas which are controversial, but not that controversial. In other words, ideas which reflect the controversies that a majority of us are willing to accept as tolerable, but to keep away from those which a majority of us are not willing to accept as tolerable, because when you get people upset they don't buy Rinso.

DANIEL: Dick?

JENCKS: Well, it's very difficult on this program, impossible, to answer that charge in a documented way. As I say, Mr. Salant answers similar charges recently made in the article I spoke of. But again, I can only say if this is a supportable charge documented, I don't think it can be documented. In fact...

BARRON: Well, Mr. Newton Minow once documented it, not working for the industry. He once documented it by saying he watched television for twenty-four hours.

JENCKS: In fact, I think it is a reckless charge, and I believe substantially false.

BARRON: In fact, I think his famous phrase was it was a vast wasteland Why was it a vast wasteland? Because it is in lack of controversy, it is being a soporific. It is just the opposite. It isn't that anybody's pushing an ideology; it's that *people* are pushing *nothing*.

DANIEL: But let's address ourselves specifically to one question, or to two. Do sponsors exercise any censorship over the news or attempt to manage the news or the presentation of public events or public issues?

JENCKS: It would be foolish of me to say as to the entire seven thousand-plus broadcast stations in this country that this never happens. All I can say is that in the network news organizations with which I am familiar, it does not happen, and very considerable precautions are taken to see to it that it cannot happen.

DANIEL: Scotty, what about the newspapers?

RESTON: Oh, it used to happen a great deal in the old days when newspapers were very *poor* in an odd kind of way. Going to your point about monopolies, I think since the stronger a newspaper becomes, the less open it is to that kind of pressure, but I would not -- I would not want to see us get too holy in defense of the press, radio, and television. I think that would be a mistake. I think very often people who are accused in the press, criticized, even their integrity challenged do not get a fair shake. Very often when we print corrections we're very grudging. We play them away back with the girdle ads somewhere. That is not fair. The distinction I am trying to make, however, is the distinction obviously we have to be fair. If we are not fair, the public will find on, and we will be in trouble ourselves.

But the essence of your point, and it's the fundamental difference between us, is that you want to turn it over to the cops and to the courts. This is a fundamental point.

DANIEL: And are they more high-handed, newspapers, now that they, more of them, are in a monopoly position?

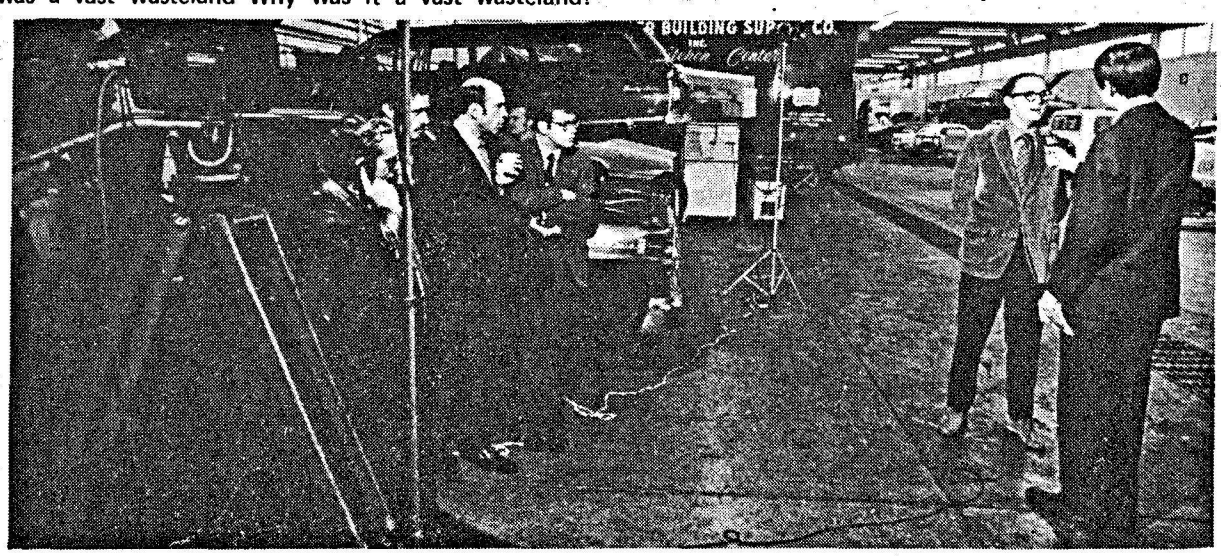
RESTON: No, as a matter of fact, sometimes I think they're not high-handed enough, because they've got rather dull since the old days.

BARRON: I'd like to respond to that. I agree with the partisanship thing. I think the American press is on the whole less partisan, perhaps, than it was in the days of the really famous publishers who really did have points of view. My own theory is that the commercial orientation of the communications industry is anti-point of view. There's no money, really, in alienating a lot of people. I'm grateful, I think, to you as a journalist for making self-criticism. In terms of right of reply, the opportunities of individuals attacked are inadequate. But how to deal with them unless by judicial action? For example, the Red Lion case, now says that where someone is personally attacked on broadcasting, he has an opportunity, if he is impecunious, to go on the air and tell his side of things. Yet, if one of our great, or even not so great newspapers attacks somebody because of a case decided in 1964, New York Times against Sullivan, it is very hard to get a libel judgment by anyone who is not only a public official, but a public figure. And almost anybody you'd want to talk about is a public figure.

And I would say that an opportunity for a right of reply, to give that right constitutional sanction, would be an excellent way to implement and assess ideas.

JENCKS: But Mr. Barron, I have a hard time figuring out what kind of -- what side of the street you're working. New York Times versus Sullivan was an attempt of the Supreme Court to modify the libel

(See INTERVIEW, next page)



GW Law Students gain access to the airwaves in Professor Donald Rothschild's Problems of the Consumer Course; the course was instituted at the NLC this semester.

Pictured above are Professor Rothschild and several law students at a filming session for an "auto warranty" spotlight series on WTTG-TV, Channel 5.

Interview-from preceding page

Advertising: An Intimidating Necessity

WFAN-TV, Channel 14, is a typical low-budget black-and-white station trying to fill a gap in minority group programming. In addition to daily news in Spanish, WFAN also broadcasts public affairs programs in Italian and Greek.

by Tom Blair

laws in the direction of making possible a more robust discussion of public issues and in particular a more robust discussion of the merits of public figures. You seem to regret that.

BARRON: I do. I think it was a very misguided opinion. I'll tell you why in a minute.

JENCKS: Commission's personal attack rules will have the effect on broadcasting, in my opinion, on many broadcasters, which the Supreme Court was trying to prevent when it decided New York Times versus Sullivan. Let me give you a recent example. The very first ruling that the Commission recently issued under the personal attack rules concerning CBS had to do with an attempt of a member of the print media, Look magazine, to buy an advertisement on a CBS Radio network to advertise an issue in which it exposed District Attorney Garrison of New Orleans and his handling of the conspiracy case down there. The Look magazine copy indicated in general what was in the article. The charges made in their copy were personal attacks under the Commission's rules, and the Commission so advised us. Under the circumstances we refused to broadcast the ad. Thus, a medium entitled to freedom of the press is now unable in this country to advertise its wares in a medium licensed under the rules you choose, and which you say contribute to robust debate and discussion.

BARRON: Well, let me comment on that. I think you're quite right, Mr. Jencks, to point out New York Times against Sullivan and the Red Lion case are really in contradiction. I personally feel that way. I would resolve it, I think, the other way than you. I would have them both go the same way. You would have them both go the same way in the other direction. But what I would say about New York Times is that what the Supreme Court does in that Case is to take what I call a very romantic view of the First Amendment.

In other words, they say, "Let's get vigorous debate in this country. How can we get vigorous debate? Well, let's make the newspapers brave. How can we make them brave? Why, by reducing the opportunity for them to be subjected to huge libel judgments." And I think there's some merit in that. That certainly ought to give fortitude and courage perhaps. On the other hand, the newspaper isn't always going to be right. And I think that's the assumption. And it isn't always going to do the right thing. And I think that's the assumption of the Supreme Court. They forget about the fellow attacked. They forget about -- what they're talking about is debate. And yet they only insist that one part of the debate be given Constitutional sanction. That is the publisher's side of it. They forget about the fellow attacked. If you're going to have a debate, he ought to be able to debate in the same forum, and they do nothing about that.

RESTON: Let's -- don't get lost on these technicalities, or we'll never get down to the point. Let me try to be practical here about this thing and get you to tell me how to be practical as an editor. Last year we printed -- we received in The Times almost forty thousand letters. Now, you can be very sure everybody who wrote each one of those letters thought that he had a reason for doing so, most of them, undoubtedly, complaining about something we had published. What do we do about that? How can we conceivably deal with the practical...

BARRON: It seems to me that the way to begin in this area is with the traditionally open section of the newspaper. Now, what are the open sections of the newspaper? They are the Letters to the Editor column or the advertisements.

DANIEL: Remember we are talking about forty thousand letters. It would take, according to my calculations -- I've given this figure before -- 135 full weekday issues to print all of those forty thousand letters.

BARRON: And that's why I'm not very optimistic about much success along the lines of letters to the editor. On the other hand, I think that a monopoly newspaper or even a newspaper with one or two competitors such as the case with the New York Times is, I think, under some obligation to take political ads which after all pay for themselves. And that's why -- and if they don't take it, then I think I'd move in with legal action.

DANIEL: Throughout this discussion you have referred to monopoly newspapers. I think we all know there's been a tendency to concentrate newspaper ownership.

In New York, one strong, rich newspaper dominates the serious newspaper field. We have competitors, but one newspaper is dominant, I think, in serious journalism, and nationally, two great corporations really dominate broadcasting. Is there a real danger of monopoly here, Scotty? Are there dangers inherent in the situation?

RESTON: I used to think there was a great danger in it, but I think two things have changed it fundamentally. One, the enormous growth in your field of other voices through radio and other outlets. Second, the whole trend toward -- of newspaper technology is going in the opposite direction with photo type-setting coming in.

BARRON: On the monopoly point -- I emphasize monopoly not, I think, for the reason you gentlemen might be thinking. I emphasize monopoly because it seems to me that just from a legal point of view, if you're the only paper in town, you're more quasi-public, if you want. In other words, you have more obligations. But it seems to me that the problem is much deeper than one of monopoly. In other words we all know, and you as media people know, that some of the best papers in this country, for example, are published in one-newspaper towns. And that some of the worst newspapers in this country are found in situations where you have some relative competitive situation.

And so it seems to me that the basic problem is not one so much of multiplying the number of private outlets because they all represent the same business bias. It seems to me you can't expect too much from them. What you have to insist on is not that a lot of people own it, but that there be some legal device for diversity, to insist on diversity, and that's the point I would emphasize.

RESTON: Well, I still don't -- I still don't see what you do with the practical problem. If you would give me your view of the way you think the world is going and what institutions for freedom should be strengthened and what are weakened, then maybe I would understand you. But if you are saying that at this point in history that the free press should be weakened and the politician's hand strengthened...

BARRON: Well, I'm not saying that.

RESTON: ...I couldn't disagree with you more.

BARRON: Well, I couldn't disagree with that more, either. Let me give you an example. Let's take it in the -- well, here's one. This is the magazine area. This appeared in the Washington Post I guess yesterday. The Journal of the American Medical Association again has refused to print an authoritative paper intended to alert the medical profession to serious and sometimes fatal hazards from classes of drugs. And then the article goes on to say that apparently the reason for that is for fear of offending advertisers. And then it ends: "Denied the vast national audience of the Journal of the American Medical Association, the agency succeeded in getting the paper published in a local journal." Well, I...

RESTON: Don't you like the plurality of the press that enables the Washington Post to expose that? Don't you want to protect that?

BARRON: Yes, I do. But I think it's very important to have a right to reply in the forum which you're mainly interested in, and these scientists are mainly interested in reaching American doctors.

JENCKS: Would you apply that to the New Republic and other journals of opinion?

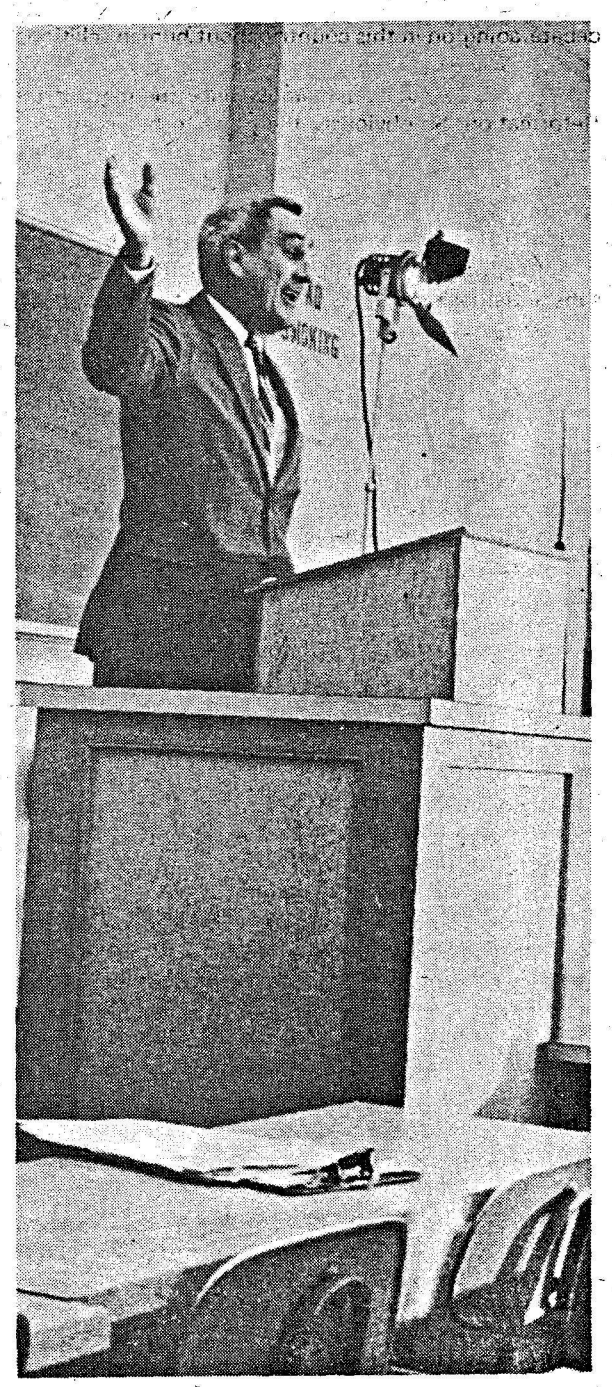
BARRON: Yes, I would, and I am going to give you an example on that. After "New York Times", to show you that way this New York Times against Sullivan thing has been galloping along, unsatisfactorily in my point of view, the National Review had some unpleasant things to say about Linus Pauling. And he sued. And what the courts -- the position the courts took was, well, they extended the New York Times from a public official to a public figure, and they said, well, you're a public figure -- you asked for it, you know. You have been signing petitions all your life and you've had a lot to say on public issues. And if people say unpleasant things about you, even though they happen not to be true, that's the price you pay. That's what makes it all work. It seems to me that's not what makes it all work and that he ought to have an opportunity in the National Review to put his side of the case, and I'd apply that to the New Republic, too, the other way around.

JENCKS: Well, I should make just one comment concerning this business of...

DANIEL: I'm afraid I'm going to have to prevent you. As a television executive, I'm sure you will understand.

JENCKS: I certainly do.

DANIEL: Because our time is up.



Professor Miller "borrows" a tax class for filming of a GASP promo.

by Tom Blair

Some Unidentified But Reliable Sources Say Yes

Must America Muffle Muckrakers?

by Susan Sheppard

The ambiguous phrase "an unidentified but reliable source" is one seen and heard frequently in the print and broadcast media. To a listener or viewer it elicits little reaction. To legal authorities, though, more perplexing questions are raised. The primary issue is whether or not newsmen can be compelled to disclose these sources when legal proceedings demand identification of them and of the information they have supplied.

Resolution of this question is a complex, unresolved process, whose progress is traced in the conflict between old common law traditions and new policy trends. And in analyzing newsman's privilege, both components must be considered, since erosion of the old under the force of the new has resulted in a confused synthesis of both.

At common law, although other groups were immune from forced testimony (doctors, lawyers, clergymen), testimonial privilege has always been denied newsmen. Despite the common law's tenacity in resisting destruction of its testimonial doctrines, however, fifteen jurisdictions in the United States have legislatively established a newsman's privilege. Similar legislation has been proposed and rejected in the Congress of the United States and in other state jurisdictions.

The statutes are fairly similar in their general purpose of permitting nondisclosure of a newsman's source, though variations do occur. In a majority of jurisdictions the coverage is extended to all media--printed and broadcast--though New Jersey and Louisiana protect only newspapers. Qualifications for individuals who may claim the privilege also vary from the general requirement of being "engaged in the work of gathering and disseminating news" to the stringent restriction of being "connected with a newspaper that conforms to postal regulations, that has been published for five years in the same city or town, and that has a paid circulation of two percent of the population in the area in which it is published."

States are divided on whether or not publication or dissemination must have occurred for the privilege to be claimed. Though most statutes establish an absolute privilege, Arkansas, Alaska, New Mexico, and Louisiana have created one that is qualified and requires disclosure where the court, "after hearing the parties, finds that the disclosure is essential to the public interest."

Of the several interests of varying degree and kind juxtaposed in the newsman's privilege conflict, the "public interest" issue is the most complex and the most important.

Basically, the privilege is considered necessary by its proponents in order to insure a free and complete flow of information to the public--a function the media perform in the public interest and one engrained deeply by the American tradition and its courts.

Competing with this theory is the equally important policy argument that adequate judicial enforcement of American law requires compulsory testimony in court; it is this argument which prevails in jurisdictions without the privilege.

Advocates of both these theories assert that each promotes the public interest, yet only rarely is an attempt made to define precisely what that public interest is. Consequently, conflicts occur repeatedly.

One of the basic conflicts arises when newsman's testimony is required by a plaintiff in a civil action, generally in a libel suit. Public interest in this instance can be construed in the old common law tradition as the interest each citizen might have if he should ever need testimony in a private suit.

Public interest here is for the benefit of only one individual at a time, rather than for the public as a whole. It is public, though, in the sense that every citizen has a vested interest in maintaining the right to force testimony in possible legal actions.

Increasingly it appears that the interest of an individual litigant in a law suit, though conceivably a public interest, is a public interest which may demand subordination in certain instances to the right to complete news coverage.

Two interesting developments have appeared recently. One is an interpretation of a privilege statute made by the Pennsylvania Supreme Court in In re Taylor, 193 A.2d 181, (1963). Abruptly reversing all prior case law, the court construed the existing statute to protect not only the source of the information, but the information itself as well. All previous cases had construed the statutes strictly, considering source and information two disparate concepts: one could be revealed without affecting the other.

Justification for the court's decision was based on the public interest in not restricting newspapers' activities and in protecting them as "the principal watch-dogs and protectors of honest, as well as good, Government." The court accepted the frequent contention of newsmen that if disclosure of either source or information is forced, sources will refuse to offer information for fear of self-incrimination and complete news coverage will consequently be impaired.

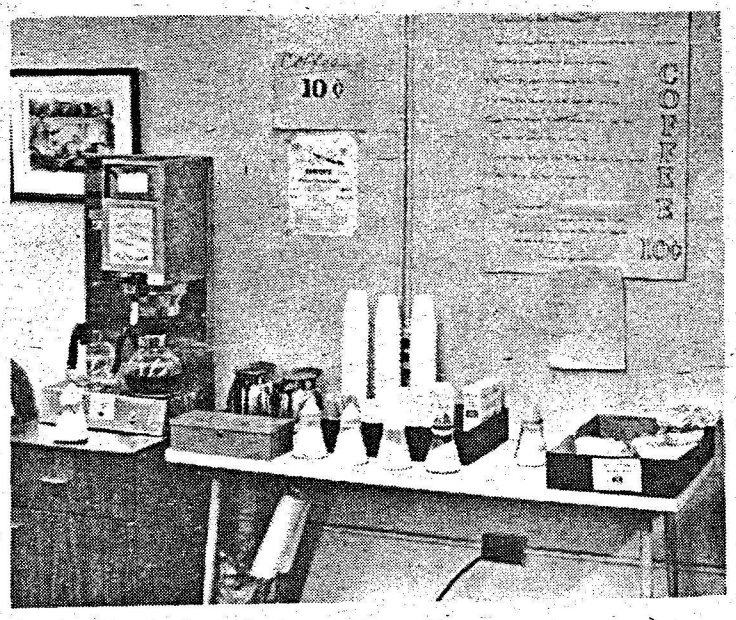
The second development is an increasingly common assertion by newsmen that their privilege has a constitutional basis in the First Amendment and should not be restricted. The argument offered is that a restriction on the right to gather news is an infringement on the constitutionally protected right to publish and that a restriction on the first effectively vitiates the second. Though courts have refused to accept this argument, its eventual adoption could result in extensive changes in the law.

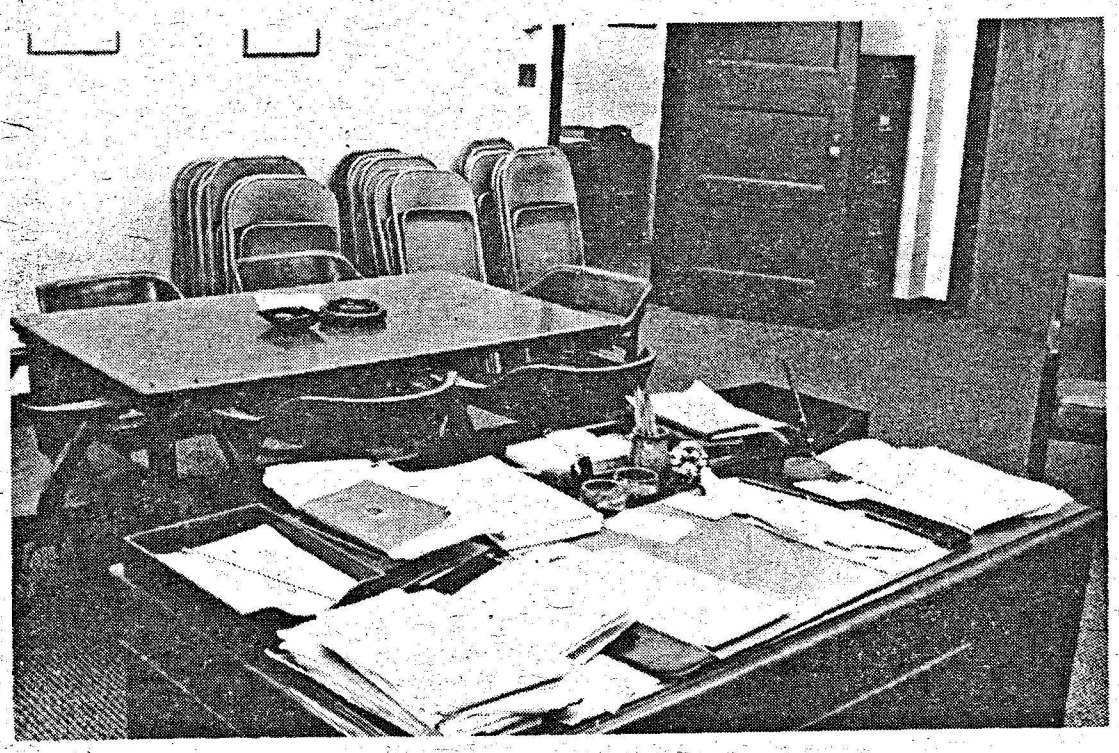
In assessing newsman's privilege, it is important to consider whether or not recognition of the privilege has any effect, either beneficial or adverse, on the coverage of news. Opponents contend that some of the most reputable newspapers exist in jurisdictions without the privilege (New York Times, Washington Post, Milwaukee Journal) and have not suffered in comparison with those newspapers protected by it.

Advocates, however, assert that looking at output does not tell what might have been. In both cases, no substantial or definite evidence can be produced to support either position. Even newsmen themselves are divided in their opinion of both the frequency of a paper's use of unidentified sources and the importance of that use when it does occur.

In view of the opposing interests in the newsman's privilege conflict, a balancing solution seems most appropriate and practical. Rather than adhering to the pattern of rigidity existing in both statute and non-statute jurisdictions, both the court and the legislatures should recognize the validity of these competing interests.

Sacrificing either public interest entirely--the right to testimony or the right to read complete news coverage--is both unwise and unwarranted. A plausible solution seems to exist in the Arkansas, Alaska, New Mexico, and Louisiana statutes requiring disclosure only when the public interest, as determined by the courts, demands it.





The Coffee Bar in the basement of Stockton was an attempt to get students and faculty together. Students are catching on, but faculty members have not been seen here.

by Tom Blair

Over the past several years the Student-Faculty Committee has administered a Faculty evaluation at the close of each semester. While in the past the results of the evaluations have been confidential, last week the committee voted to publish the results of the questionaires completed at the close of the fall semester.

In anticipation of this publication, The Advocate discontinued its Faculty Evaluation series.

by Tom Blair

This is the only inside view The Advocate will gain of the Faculty Meeting Room, as the Green Committee turned down an Advocate request to have a reporter present at faculty meetings to inform the students about law school policy.

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